THE

FIRST PART

OF THE

INSTITUTES

OF THE

LAWS OF ENGLAND.

IN THREE VOLUMES.

VOL. II.
THE
FIRST PART
OF THE
Institutes of the Laws of England;
OR, A
COMMENTARY UPON LITTLETON:
NOT THE NAME OF THE AUTHOR ONLY, BUT OF THE LAW ITSELF.

Quid te vana juvant misera ludibria chartae?
Hec lage, quod possis dicere jure meum est.

MART.

Major hereditas venit unicuque nostrum a jure et legibus, quæm æ parentibus.
CICERO.

Hec ego grandevus posui tibi, candide lector,

Authore EDWARDO COKE, MILITE.

THE FIRST AMERICAN, FROM THE SIXTEENTH EUROPEAN EDITION;
REVISED AND CORRECTED, WITH ADDITIONS OF NOTES, REFERENCES,
AND PROPER TABLES.

BY FRANCIS HARGRAVE AND CHARLES BUTLER,
ESQUIRES, OF LINCOLN'S-INN.
INCLUDING ALSO THE NOTES OF
Lord Chief Justice HALE AND LORD CHANCELLOR NOTTINGHAM:

AND
AN ANALYSIS OF LITTLETON, WRITTEN BY AN UNKNOWN HAND IN 1658-9.
TO WHICH ARE NOW ADDED, CONSIDERABLE IMPROVEMENTS,
BY THOMAS DAY, ESQ.

PHILADELPHIA:
PUBLISHED BY JOHNSON AND WARNER, AND
SAMUEL E. FISHER, JR.
1812.
ESTATES which men have in lands or tenements upon condition are of two sorts, viz. either they have estate upon condition in deed, or upon condition in law, &c. Upon condition in deed is, as if a man by deed indented escoffes another in fee simple, reserving to him and his heirs yearly a certaine rent payable at one feast or divers feasts per annum, on condition that if the rent be behind, &c. that it shall bee lawfull for the fofoor and his heirs into the same lands or tenements to enter, &c. And if it happen the rent to be behind by a week 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 lawfull to the fofoor and his heirs to enter, &c. In these cases if the rent be not paid at such
Of Estates

En ceux cases si le rent ne soit paie a tiel temps ou devant tiel temps limit et specifique deins le condition comprisés en l'indenture, donques poit le feoffor ou ses heires entrer en tels terres ou tenements, et eux en son primer estate azer et tener, et de ceo ouste le feoffee tout net. Et est appelle estate sur condition, pur cee que le state le feoffee est defeasible, si le condition ne soit perfore, &c.

S

UR condition." Littleton having before spoken of estates absolute, now beginneth to entreat of estates upon condition. And a condition annexed to the realtie, whereof Littleton here speaketh in the legall understanding, est modus, a qualitie annexed by him that hath estate, interest, or right, to the same, whereby an estate, &c. may either be defeated, or enlarged, or created upon an incertaine event. Conditio dictatur cum quid in casum incertum quae potest tendere ad esse aut non esse confertur.

"Sur condition en fait," que est fact, that is, upon a condition expressed by the partie in legall terms of law.

"Ou sur condition en ley, &c." que est juris, that is, tacite created by law without any words used by the partie. Againe, Littleton subdivideth conditions in deed, (though not in expresse words) into conditions precedent (of which it is said, Conditio adimpleri debet priuquam sequatur effectus) and conditions subsequent. Againe, of conditions in deed some be affirmative, and some in the negative; and some in the affirmative, which imply a negative: some make the estate, whereunto they are annexed, voidable by entrie or clayme, and some make the estate void ipso facto, without entrie or claimie.

Also of conditions in deed, some bee annexed to the rent reserved out of the land, and some to collaterall acts, &c. some be single, some in the conjunctive, some in the disjunctive, as shall evidently appear in this Chapter, where the examples of these divisions shall be explained in their proper place.

"En ley, &c." Of conditions in law more shall be said hereafter in this Chapter.

"Sur condition en fait est, sicome un home per fait indent, &c." Here Littleton putteth one example of sixe severall 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. Fifthly, a condition that defeateth not the estate before an entrie. And lastly, a condition in the affirmative, which implieth a negative, (as behind or unpaid implieth a negative) viz. not paid. All which doe appeare by the expresse words of Littleton.

"Rend a buy certaine rent, &c." Here by this (&c.) is implied for life, in taile, or in fee.

"Et
upon Condition.

"Et in certa case si le rent ne soit pay a tiet temps, &c. donques poscit le feffor ov seu heires enter, &c." By this Section, and by the (Or.) therein contained, sixe things are to be understood.

First, Where our author saith, si le rent ne soit aree, that though the rent be behind and not paid [6], yet if the feoffor doth not demand the same, &c. he shall never re-enter (1), because the land is the principal 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 evicted by a tidle paramount, the rent is avoided, and after such eviction 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 upon the land, because the land is the debtor, and that is the place of demand appointed by law (2).

If the king maketh a lease for yeares, rendering a rent payable at his receipt at Westminster, and after the king granteth the reversion to another and his heires, the grantee shall demand the rent upon the land, and not at the king's receipt at Westminster; for as the law without expresse words doth appoint the lessee in the king's case to pay it at the king's receipt, so in case of a subject, the law appoints the demand to be on the land (3).

If there be a house upon the same, he must demand the rent at the house. And he cannot demand it at the backe doore of the house but at the fore doore, because the demand must ever be made at the most notorious place. And it is not material whether any person be ther or no.

Albeit the feoffee be in the hall or other part of the house, yet the feoffor need not [7] but come to the fore doore, for that is the place appointed by law, albeit the doore be open.

If the seffoment 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 wiedie to pay the rent, yet that shall not avail him. Et sic de similibus.

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 alledge a demand of the rent generally at the house, the feoffee may traverse the demand, and upon the evidence it shall be found for him, for that it was a void demand.

Fourthly, If the rent be reserved to be 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, observing that which hath beene said before concerning the most notorious place.

Fiftly, And all this is to be understood when the feoffee is absent; for if the feoffee commeth to the feoffor at any place upon 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

(1) [See Note 85.]
(2) For the place of performing the condition, see Litt. Sect. 340, and the Commentary.
(3) [See Note 86.]
the feoffor is bound to receive it, or else he shall not take any advantage of any demand of the rent for that day. (1)

Sixty, Therefore 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 convenient time before the sunne setting of the last day of payment as the money may be numbred and received, notwithstanding if the tender be made to him that is to receive it upon any part of the land at any time of the last day of payment, and he refuseth, the condition is saved for that time, for by the expresse reservation the money is to be paid on the day indefinitely, and convenient time before the last instant, is the uttermost time appointed by law, to the intent (2) that then both parties should meet together, the one to demand and receive, and the other to pay it, so as the one should not prevent the other. But if the parties meet upon any part of the land whatsoever on the same day, the tender shall save the condition for ever for that time.

And if the reservation of the rent be (as here Littleton putteth the case) at certaine feasts, with condition that if it happen the rent to be behind 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 uttermost time for the demand is a convenient time (as hath beene said) before the last day of the weeke, unless before that the feoffor meet the feoffor upon the land and tender the rent as is aforesaid (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 enable him to distreine.

"Et eux en son prifer estate avel, &c." Regularly it is true that he that entres for a condition broken shall be seised in his first estate, or of that estate which hee had at the time of the estate made upon condition, but yet this payleth in many cases.

1. In respect of impossibility. As if a man seised of lands in the right of his wife maketh a feoffment in fee by deed indented, upon condition that the feoffee should demise the land to the feoffor for his life, &c. the husband dieth, 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 have 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 couverture was dissolved. And therefore when the heire hath entred for the condition broken and defeated the feoffment, his estate doth vanish, and presently the state is vested in the wife.

2. In respect of necessity. If Cysty que use after the statute of R. 3. and before the statute of 37 H. 8, had made a feoffment in fee upon condition, and after had entred for the condition broken; in

(1) For the difference of the demand to be made in case of a re-entry to avoid an estate, or the forfeiture of a sum semina firme; and of the demand to be made in case of an entry to distrain, see before 144. a.  
(2) [See Note 87.]  
(3) [See Note 88.]
in this case he had but an use when the feoffment was made, but
now he shall be seised of the whole state of the land. So that as in
the former case, the ancestor had somewhat at the making of the
condition, and the heire shall have nothing when he hath entred for
the condition broken, so in this case the feoffor had no estate or in-
terest in the land at the time of the condition made, but a bare use;
yet after his entrée for the condition broken he shall be seised of the
whole state in the land, and that also for necessitie, for by the
fofeoffment in fee of Cestry que use, the whole estate and right was de-
vested out of the foeoffees. And therefore of necessitie the feoffor
must gaine the whole estate by his entrée for the condition broken.

Tenant in speciall taile hath issue, and his wife dieth, tenant in
taille maketh a feoffment in fee upon condition, the issue dieth,
the condition is broken, the feoffor re-enters, he shall have
but an estate for life, as tenant in taille after possibillity of
issue extinct by the re-entry, and yet he had an estate taille 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 hommage ancestral maketh a feoffment in fee upon condition, and
entret in the condition broken, it shall never be holden by
homage ancestral againe. And so it is if a copihole escheate, and
the lord make a feoffment in fee upon condition, and entret for the
condition broken. And the reason in both these cases is, for that the
custom or prescription for the time is interrupted.

(1) Lord and tenant by fealty and rent, the lord is in seisin of
his rent, the lord granteth his seigniory to another and to his heires
upon condition, the tenant attorneth and payeth his rent to the
grantee, the condition is broken, the lord distreineth for his rent,
and rescous is made, he shall be in his former estate, and yet the
former seisin shall not enable him to have an aswise without a new
seisin.

If tenant in taille make a feoffment in fee upon condition, and
dieth, the issue in taille within age doth enter for the condition bro-
kenn, he shall be first in as tenant in feem simple as heire to his fa-
ter, and consequently and instantly he shall be remitted. But if the
heire be of full age, he shall not be remitted, because he might have
had his formedon against the feoffee, and the enriee for the
condition is his owne act; but more shall be said hereof in his pro-
per place in the Chapter of Remitter.

If a man make a feoffment in fee of Blacke Acre and White Acre
upon condition, &c. and for breach thereof that he shall enter into
Blacke Acre, this is good.

If tenant for life make a feoffment in fee upon condition, and en-
trëth for the condition broken, he shall be tenant for life againe, but
subject to a forfeiture, for the state is reduced, but the forfeiture is
not purged. (2)

(1) [See Note 89.] (2) [See Note 90.]
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IN the same manner it is if lands be given in taile, or let for termes of life or of yeares, upon condition, &c.

"Sur condition, &c." This implyeth the several kindes of conditions in deed before specified.

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BUT where a feoffment is made of certaine lands reserving a certaine rent, &c. upon such condition, that if the rent be behind, that it shall be lawfull for the feoffor and his heires to enter, and to hold the land untill he be satisfied or payed the rent behind, &c. in this case if the rent be behind, and the feoffor or his heires enter, the feoffee is not altogether excluded from this, but the feoffor shall have and hold the land, and thereof take the profits, until he be satisfied of the rent behind; and when he is satisfied, then may the feoffee re-enter into the same land, and hold it as he held it before. For in this case the feoffor shall have the land but in manner as for a distresse, until he be satisfied of the rent, &c. though he take the profits in the mean time to his owne use, &c.

"Et la terre tener tanque ils soient satisfies ou payes de le rent aderere, &c." By this it is implied, that if such a feoffment be made, reserving (b) for example 8 markes rent at the feast

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* a terme added in L. and M. and Roh.
† tel added in L. and M. and Roh.
‡ &c. not in L. and M.
§ ii added in L. and M.
¶ a added in L. and M.
** en la terre tenue de eux in L. and M.
† de added in L. and M. and Roh.
‡‡ que added in L. and M. and Roh.
† re-enter—entre in L. and M. and Roh.
¶ re-enter—entre in L. and M. and Roh.
†† come—coment in L. and M. and Roh.
§§ avera la terre—ses aver in L. and M. and Roh.
** que added in L. and M. and Roh.
†† que not in L. and M. nor Roh.
‡‡ a son use demesne not in L. and M. nor Roh.
feast of Easter, with such a condition as is afore said, the seffor at
the feast day demands the rent, the seffor paieth unto him 6
markes parcell of the rent, the seffor entreth into the lands and
taketh the profits towards satisfaction. Afterwards the seffor doth
tender the two markes residue of the rent to the seffor upon the
land, who refuseth it. It hath beene adjudged that the
[203. a.] seffor upon the refusal may enter into the land ; (1) for
when the seffor is satisfied either by perception of the profits or by
payment or tender and refusall, or partly by the one and partly by
the other, the seffor may re-enter into the land. And this is within
the words of Littleton, viz. (until he be satisfied.) And albeit the
seffor had accepted part of his rent, yet he may enter for the con-
dition broken, and retaine the land until he be satisfied of the
whole. All which is worthy of observation.

"Et en tel case le seffor avera la terre forsque en manner come
un distresse, saugue il soit satisfais de la rent, &c." By this it ap-
peareth that the seffor by his re-entry gaineth no estate of frehold
(2), but an interest by the agreement of the parties to take the pro-
fits in nature of a distress. And therefore if a man maketh a
lease for life with a reservation of a rent, and such a condition, if he
enter [upon] the condition broken, and take the profits of the
land quiougue, &c, he shall not have an action of debt for the rest
erere, for that the frehold of the lessee doth continue, and there-
fore the booke [c] that seemeth to the contrary is false printed,
and the true case was of a lease for yeares, as it appeareth after-
wards in the same page of the lease.

But herein also a diversity worthy the observation is implied,
viz. If a man make a lease for yeares, reserving a rent with a con-
dition, that if the rent be behind, that the lessor shall re-enter and
take the profits untill thereof he be satisfied, there the profits
shall be accounted as parcell of the satisfaction, and during the time
that be so taketh the profits he shall not have an action of debt for
the rent for the satisfaction whereof he taketh the profits. But if
the condition be that he shall take the profits untill the seffor be
satisfied or paid of the rent, without saying (thereof) or to the
like effect, there the profits shall be accounted no part of the sa-
atisfaction but to hasten the [lessee] to pay it, and as Littleton here
saith, that untill he be satisfied he shall take the profits in the
mean time to his own use (3).

(1) [See Note 91.]
(2) [See Note 92.]
(3) [See Note 93.]

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ITEM, divers parolæ (enter || || autere) y sont, queus per certe de eux services font estates sur condition; un est le parolæ sub conditione: si- come A. enfeoffa B. de certa terre, habendum et tenendum eisdem B. et heredibus suis, sub * conditione, quod idem B. et heredes sui solvant seu solvi faciant praesato A. et heredi- dibus suis annuatim talem redditum, &c. En cest case sans asunc plaisir dire le feoffo ad estate sur condition.

ALSO, divers words (amongst others) there be, which by ver- tue of themselves make estates upon condition; one is the word (sub con- diction) as if A. infeoffs B. of certaine land, to have and to hold to the said B. and his heires, upon condition, that the said B. and his heires do pay or cause to be paid to the aforesaid A. and his heires yearly such a rent, &c. In this case without any more saying the feoffe hath an estate upon condition.

Sub Con- dictione,
Marie Dyce,
13 R. 1.
Enter Conj. 57.
39 Am. 1.
33 Am. 11.
40 Am. 13.

HERE in this and the next two sections Littleton doth put four examples of words that make conditions in deed: and first sub conditione. This is the most express and proper condition in deed, and therefore our author beginneth with it.

VID. Sect. 338.

"Talem reddiitum, &c." This (of.) implieth any other rent or sum in gross, or any collaterall condition whatsoever, either to be performed by the feeoffe (whereof our author here puttheth his case) or by the feeoffor, and extendeth to all kinds of condi- tions in deed, before specified.

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ALSO, if the words were such, Provided alwayes, that the aforesaid B. do pay or cause to be paid to the aforesaid A. such a rent, &c. or these, So that the said B. do pay or cause to be paid to the said A. such a rent, &c. in these cases without more saying, the feeoffe hath but an estate upon condition; so as if he doth not performe the condition, the feeoffor and his heires may enter, &c.

"PROVISO

les added in L. and M. and Roh.
§§ sub conditione—do condition in L. and M. and Roh.

* ised added in L. and M. and Roh.
† parolæ—condicione in L. and M. and Roh.

n'ad—ad'in L. and M.
upon Condition.

"PROVISO semper, quod B. solvat, &c."

Our author putteth his case where a proviso commeth alone.
And so it is if a man by indenture letteth lands for years, provided alwayes, and it is covenanted and agreed between the said parties, that the lessee should not alien, and it was adjudged that this was a condition by force of the proviso, and a covenant by force of the other words (1).

This word proviso shall be also taken as a limitation or qualification, as hereafter in his proper place shall be said. And sometime it shall amount to a covenant. All which do appeare by the authorities in the margin*.

For the ( &c.) in this Section explanation is made in the Section next before.

"Ou fueront tiels, Ita quod." This is the third condition in deed, whereof our author maketh mention.

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ITEM, autres paroles sont en un fait queux causent les tenements entre conditionals. Sicome sur tief feoement un rent est reserve al feooffer, &c. et puis soiet mitte en le fait * cest parol, Quod si contingat redditum predictum a retro fore in parte vel in toto, quod tune bene lieebit a le feooffer et a ses heires d'entrer, &c. cee est un fait sur condition.

"QUOD si contingat, &c."

This is the fourth condition in deed set downe by our author.

ALS0, there bee other words in a deed which cause the tenements to be conditionall. As if upon such feoement a rent be reserved to the feooffer, &c. and afterward this word is put into the deed, That if it happen the aforesaid rent to be behind in part or in all, that then it shall be lawful for the feooffer and his heires to enter, &c. this is a deed upon condition.

"D'entrer, &c." Hereby it is evident, that some words of themselves do make a condition, and some other (whereof our authour here and in the next Section * putteth an example) do not of themselves make a condition without a conclusion and clause of re-entrerie: and manie times (si) makes a condition, and sometimes a limitation, as hereafter shall be said in this Chapter.

Increse potent donationi modus, conditio, sive causa. * Scito quod (ut) modus est (si) conditio (quia) causa.

Conditio is explained before. Modus is at this day properly taken for a modification, limitation, or qualification, for the which also the law hath appointed apt words; and because Littleton speaketh of

(1) [See Note 94.]

* cest parol not in L. and M. nor in Rob.
† &c. added in L. and M. and in Boh.
of this also in the end of this Chapter, I will reserve this matter to his proper place, where the reader shall perceive excellent matter of learning touching this point.

Causa, the cause or consideration of the grant. And herein there is a diversitie betwenee a gift of lands, and a gift of an annuitie or such like. For example, if a man grant an annuite pro unda acrd terre, 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 evicted by an elder title, the annuitie shall cease, for cessante causa cessat effectus. And so if an annuitie be granted pro decimis, &c. if the grantee be unjustly disturbed of the tithes the annuitie ceaseth. And so it is if an annuitie be granted pro consilio, and the grantee refuse to give counsel, the annuitie ceaseth. So if an annuitie be granted quodd prestatet consilium, this makes the grant conditionall. But if A. pro consilio impenso, &c. make a feoffement, or a lease for life, of an acre, or pro unda acrd terre, &c. albeit he denieth counsel, or that the acre be evicted, yet A. shall not re-enter, for in this case there ought to be legal words of condition or qualificacion, for the cause or consideration shall not avois the state of the foeces; and the reason of this diversitie 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 give lands to a man and his heires, causae matrimonii prelocuti, in this case if shee either marry the man, or the man refuse to marry her, she shall have the land againe to her and to her heires. [e] But of the other side, if a man give land to a woman and no her heires, causae matrimonii prelocuti, though he marry her, or the woman refuse, he shall not have the lands againe, for it stands not with the modestie of women in this kind, to aske advice of learned counsell, as the man may and ought: * and the latter, for that in the case of the woman shee may averre the cause, (for the reason aforesaid) although it be not contained in the deed, yea though the foecement be made without deed.

If a man maketh a feoffement in fee, ad faciendum, or faciendo, or ad intentione, or ad effectum, or ad propositum, that the feofement shall doe or not do such an act, none of these words make the state in the land conditionall, for in judgement of law they are no words of condition; and so it was resolved, Hii. 18 Eliz. in Com. Banc. in the case of a common person; but in the case of the king the said 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 myselfe heard and observed.

But for the avoyding 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 said lessee shall continually dwell upon the capitall messuage of the said manor, upon paine of forfeiture of the said terme) these words amount to a condition.

And
Sect. 331.

Upon Condition.

And so it is if such a clause be in such a lease, Quod non licbit to the lessee, dare, vendera, vel concedere statum, et sub pena furia factura, this amounts to make the lease for yeares defeasible, and so it was adjudged in the court of common pleas [g] in queene Elizabeth’s 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 dissolved.

[304. b.]

But there is a diversite in this word si contingat, &c, and the words next aforesaid, &c. For these words, si contingat, &c, are nought worth to such a condition, unless it hath these words following, That it shall be lawfull for the feoffor and his heires to enter, &c. But in the cases aforesaid, it is not necessarie by the law to put such clause, sicilieat, that the feoffor and his heires may enter, &c. because they may doe this by force of the words aforesaid, for that they containe in themselves a condition, sicilieat, that the feoffor and his heires may enter, &c. Yet it is commonly used in all such cases aforesaid to put the clauses in the deeds, sicilieat, if the rent be 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 express to the common people, who are not learned in the law, of the manner and condition of the feoffment, &c. As if a man seised of land letteoth the same land to another by deede indented for terme of yeares, rendering to him a certaine rent, it is used to be put into the deed, that if the rent be behind at the day of payment, or by the space of a weeke or a moneth, &c. that then it shall be lawfull

— in L. and M. and Bob.

et le dire—de in L. and M. de le in Rob.

de la maniere—de materre in L. and M. and Rob.

§ come de fraenemenent added in L. and M.

* Et added in L. and M. and Bob.
Rental arrears, &c. comment que tiels paroles ne unque fueront mises en le fait, &c.

"Ils ne bevoignent per la ley de mitter tiel clause, &c." Que dubitationem causae tollende inexcusatur, communiem [205. a.-] legem non tradunt. Et expressio eorum que tacitum insunt, nihil operatur.

"Per un mois, &c." Here albeit the clause of distress be added, that if the rent be behind by the space of a weeke or a moneth, that the lessor may distress, yet he may distress within the weeke or moneth, because a distress is incident of common right to every rent service. And the words be in the affirmative, and therefore cannot restraine that which is incident of common right.

The other (&c.) in this Section upon that which hath beene said are evident.

Sect. 332.

ITEM, if a feoffment be made upon such condition, that if the feoffor pay to the feoffee at a certain day, &c. 40 li. of argent, that with the feoffor poit re-enter, &c. in eee cases the feoffee est appel tenant en mortgag, that est autant a dire en Francois comme mortgag, and in Latin mortuum vadium. Et il semble que le cause pur que il est appelle mortgag, est pur cee que il estoit en aventur si le feoffor † voit payer au jour limite tiel summe ou non : et si il ne paya pas, donne le terre que il miter en gage sur condition de payment de le money, est ale de luy a touts jours, et insint mort || a luy sur condition, &c Et si il paya le money, donques est le gage mort quant a le tenant, &c.

"Mortgage" is derived [c] of two French words, viz, mort, that is mortuum, and gage, that is vadium, or hignus. And it is called in Latin mortuum vadium, or mortgagium. Now it is called here mortgag or mortuum vadium, both for the reason here expressed by Littleton, as also to distinguish it from that which is called vivum va- dium. Vivum autem dictum vadium, quia nuncupat moritur ex aliquid parte quod ex suis proventibus acquiratur. As if a man borrow a hundred

* ascum added in Rob. but not in L. and M.
† a ascum home added in Rob. but not in L. and M.
‡ voit—poet, in L. and M. and Rob.

(1) [See Note 96.]
upon Condition.

Sect. 333, 334.

a hundred pounds of another, and maketh an estate of lands unto him, until he hath received the said summe of the issues and the profits of the land, so as in this case neither money nor land dieth, or is lost, (whereof Littieton hath spoken [d] before in this Chapter) and therefore it is called vivum vadium.

[d] Vid. Sect. 337.

ITEM, siccome home poit faire feoßment en fee en mortgage, * issint home poit faire done en taille en mortgage, et un leas pur terme de vie, ou per terme des ans en mortgage. † Et tout tiels tenants sont appelés tenants en mortgage, solonque les estates que ils ont en la terre, &c.

This Section upon that which hath beene said needeth no further explication.

Sect. 334.

ITEM, si feoßment soit fait en mortgage sur condition, que le feoffor payera tiel summe a tiel jour, &c. est exact en ce que lors payent per leur fait endent accorde et limit, coment que le feoffor morust devant le jour de payment, &c. uncoire si le heire || le feoffor paya mesme le summe & de money a mesme le jour a le feoffe, ou tender a buy les deniers, et le feoffee eco refuse de receber, donque poit l'heire entrer en le terre; et uncoire le condition est, que si le feoffour payera tiel summe a tiel jour, &c. nient feasant mention en le condition d' aucun payment d' estre fait per son heire, mes pur ceo que le heire ad interesse de droit en le condition, &c. et l'entent fut que les deniers serroint paies al jour assesse, &c. et le feoffee n'ad plus d'ame, si il soit pay per l'heire, que s'il fuit pay per le pier, &c. et per cest cause, si le heire paya les deniers, ou tendera les

† enter—perenter, L. and M. and Roh.

† issint home poit faire done en taille en mort- gage, not in L. and M. nor Roh.

† Et not in L. and M. nor Roh.

‡ de added in L. and M. and Roh.

§ de money not in L. and M. nor Roh.
Les derniers a le jour assesse, &c. et l'aulter cec refuse, il peut entrer, &c. Mes si un estranger de sa testee demesne, que n'ad aucun interess, &c. voile tender les * avoindits demiers al feoffee a le jour assesse, le feoffee n'est pas leus de cec recevoir. Money to the feoffee at the day appointed, the feoffee is not bound to receive it.

**Q** UE le feoffor paiera a tial jour, &c." Albeit conditions bee not favoured, yet they are not always taken literally, but in this law enablest the heire that was not named to performe the condition for foure causes. (1)

First, Because there is a day limited, so as the heire commeth within the time limited by the condition, for otherwise he could not doe it, as shall be said hereafter in this Chapter.

Secondly, For that the condition descends unto the heire, and therefore the law that giveth him an interest in the condition, giveth him an abilitie to performe it.

Thirdly, For that the feoffee doth receive no dammage or pre-judice thereby (all these reasons are expressly to be collected out of the words of Littleton.). And these things being observed,

Fourthly, The intent and true meaning of the condition shall be performed. And where it is here said, that the heire may tender al jour assesse, &c. herein is implied, that the executors or administrators of the morgagor, or in default of them the ordinary may also tender, as shall be said [f] hereafter in this Chapter. But what if the condition had beene, if the morgagor 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 observed, 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 be avoyded, as shall bee said hereafter in this Chapter. And therefore the law here enableth the heire (of whom no mention was made in the condition) to performe the condition, lest the inheritance should be lost, wherein divers diversities are worthy of observation. (1)

First, betwene a condition annexed to a state in lands or tenements upon a feoffment, gift in tail, &c. and a condition of an obligation, recognizance or such like. (8) For if a condition annexed to lands bee 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 avoyded. As if a man maketh a feoffment in fee upon condition, that the feoffor shal within one yeere goe to the citie of Paris about the affairs of the feoffee, and presently after the feoffor dyeth, so as it is impossible by the act of God that the condition should be performed, yet the estate of the feoffee is become absolute; for though the condition be subsequent to the state, yet there is a precedancy before the re-entry, viz. the performance of the condition. And if the land should by construction of law be taken from the feoffee, this should work a dammage to the feoffee, for that the condition is not performed which was made for his benefit.

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* avoindits not in L. and M. but in Roh.
† pas not in L. and M. but in Roh.

(1) [See Note 97.]
(206. a.)
(1) [See Note 98.]
Lib. 3. upon Condition.

It appears by Littleton, that it must not be to the damage of the feoffee; and so it is if the feoffee shall appear in such a court the next term, and before the day the feoffee dyeth, the estate of the feoffee is absolute. But if a man be bound by recognition or bond with condition that he shall appear the next term in such a court, and before the day the comuse or obligor dyeth, the recognition or obligation is saved; and the reason of the diversitie is, because the state of the land is executed and settled in the feoffee, and cannot be redeemed back againe but by matter subsequent, viz. the performance of the condition. But the bond or recognition is a thing in action, and executory, whereof no advantage can be taken until there be a default in the obligor; and therefore in all cases where a condition of a bond, recognition, &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 saved. 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 be impossible, no state or interest shall grow 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 Westminster to the church of St. Peter in Rome within three hours, that then the obligation shall be void. The condition is void 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 voided. If a man make a lease for life upon condition that if the lessee goe to Rome, as is aforesaid, that then he shall have a fee, the condition precedent is impossible and voided, and therefore no fee simple can grow to the lessee. If a man make a feoffment in fee upon condition that the feoffee shall re-enfeoffe, 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 feoffee is the cause wherefore the condition cannot be performed, and therefore shall never take advantage for non-performance thereof. [i]" And so it is if A. be bound to B. that A. S. shall marry Jane G. before such a day, and before the day B. marry with Jane, he shall never take advantage of the bond, for that he himselfe is the means that the condition could not be performed. And this is regularly true in all cases.

But it is commonly helden [k] that if the condition of a bond, &c. be against law, that the bond itselfe is void. But herein the law distinguisheth between 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.
tinnitus. As if a man be bound upon condition that he shall kill J. S. the bond is void.

But if a man make a feoffment upon condition that the feoffee shall kill J. S. the estate is absolute, and the condition void.

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 bee 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 himself hath made.

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 enfeoff his wife, the condition is void and against law, because it is against the 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 plentiful authorities in our books (1).

"Tender les demieres al jour asseesse, &c." Note, hereby is implied, that albeit a convenient time before sun set be the last time given to the feoffor to tender, yet if he tender it to the person of the mortgagee at any time of the day of payment, and hee refuseth it, the condition is saved for that time.

"Il foect enterre, &c." And so may his heire after his death.

"Mes si estranger de sa teste demenee, que n'ad aucun interesse, &c. videe tender les avautdis demieres al feoffe al jour asseesse, le feoffe n'est pas tenus de ceo recever." Nota, by this period and the ( &c.) it is implied, that if the mortgager dye, his heire within age of 14 yeares (the land being holden in socage), the next of kinne to whom the land cannot descend being his gardian in socage may tender in the name of the heire, because he hath an interest as gardian in socage. Also if the heire be within age of 21 yeares, and the land is holden by knights service, the lord of whom the land is holden may make the tender of his interest which he shall have when the condition is performed, for these in respect of their interest are not accounted estrangers.

But if the heire be an idiot, of what age soever, 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.

"Le feoffee n’est pas tenus de ceo recever." And note that Littleton saith, that he is not bound to receive it at a stranger’s hand. But if any stranger in the name of the mortgagor or his heire (without his consent or privity) tender the money, and the mortgagor accepteth it, this is a good satisfaction, and the mortgagor or his heire agreeing thereunto may re-enter into the land, omnis ratiohabilio retris raihir et mandato aquipura:ur. But the mortgagor or his heire may disagree thereunto if he will.

(1) [See Note 99.]

Sect.
ET memorandum que en tiel cas, les tiel tender de le money est fai, &c. et le seffoier de recever cee renum, par que le seffor ou ses heires entrent, &c. donque le seffoier n'ad aucun remedie d'aver le money per le common ley, par cee que il serra retet au folke que il refous le money, quant un loyal tendre de cee fuit fait a lay.

"TENDER de le money est fait, &c." Here is implied at the due time and place according to the condition.

"Esentrant, &c." viz. into the lands or tenements.

"Donque le seffoier n'ad aucun remedie d'aver le money per le common ley, &c." And the reason is, because the money is collaterall to the land, and the seffoier hath no remedy therefor.

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 upon the obligation, if the defendant plead the tender and refusall, he must also plead that he is yet ready to pay the money, and tender the same in court. But if the plaintiff will not then receive it, but take issue upon the tender, and the same be found against him, he hath lost the money for ever.

If a man be bound in 200 quarters of wheat for deliverie of a 100 quarters, if the obligor tender the money at the day a 100 quarters, &c. he shall not plead avors fortis, because albeit it be parcel of the condition, yet they be bona pecunia, and it is a charge for the obligor to keep them. And the reason wherefore in the case of the obligation the summe mentioned in the condition is not lost by the tender and refusall, is not only for that it is a duty and parcel 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, liberta pecunia non liberat officientem.

But if a man make a single bond, or knowledge a statute or recognizance, and afterwards made a defaunse for the payment of a lesser sum at a day, if the obligor or conuser tender the lesser summe at the day, and the obligee or conuser refuseth it, he shall never have any remedy by law to recover it, because it is no parcel of the sum contained in the obligation, statute, or recognizance, being contained in the defaunse made at the time or after the obligation, statute, or recognizance. And in this case in pleading of the tender and refusall the partie shall not be driven to plead, that he is yet ready to pay the same or to tender it in court: neither hath the obligee or conuser any remedy by law to recover the
the summe contained in the defeasance. [o] And so it is if a man make an obligation of 100 pound with condition for the delivery of corne, or timber, &c. or for the performance of an arbitrement, or the doing of any act, &c. This is collateral to the obligation, that is to say, is not parcell of it, and therefore a tender and refusal is a perpetuall barre (2).

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 collateral condition, yet it is well performed, because this amounts in law to a feoffment (3).

"Money, moneta, legalis moneta Anglia," lawfull money of England, either in gold or silver, is of two sorts, viz. the English money coined by the king's authoritie, or foraine coynye by proclamation made currant within the realme. Coynce, cuna [207. b.]
dicitur à 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 à sumps, id est communis, quod sit omnibus reddis communis. Moneta dicitur à monendo, not only because he that hath it, is to be warned providently to use it, but also because nota illa de authore et valore admonet. Pecunia dicitur à pecu, beasts, omnes enim vexillum divitiis in animalibus consistebant; and it appeareth that in Homer's time there was no money but exchange of cattell, &c. (1)

Nummus, num ve ripus, quia lege sit non natura. Vide (2) 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 twenty pence.

Sect. 33b.

ITEM, si feoffment soit fait sur tiel condition, que si le feoffee paye al feoffor a tiel jour inter cas limit xxxl.* adonques le feoffor acerra la terre a luy et a ses heires; et s'il faile de payer les deniers a le jour † assese, ‡ que adonque bien list a le feoffor ou a ses heires d'enter, &c. et puis devant lejour assese, le feoffor venda la terre a un auter, et de cee fait feoffment a luy, en cet cas si le second feoffor voile tender le summe de les deniers a le jour assese a le feoffor, et le feoffor coco refusa, &c. donque le second feoffor ad

ALSO, if a feoffment be made on this condition, that if the feoffee pay to the feoffor at such a day between them limited twenty pounds then the feoffor shall have the land to him and to his heires; and if he fail to pay the money at the day appointed, that then it shall be lawful for the feoffor or his heires to enter, &c. and afterwards, before the day appointed, the feoffor sel the land to another, and of this makest a feoffment to him, in this case if the second feoffee wil tender the sum of money

[207. b.]

(1) See Note 103.
(2) See Note 102.
* que added in L. and M. and Roh.
† assese—&c. L. and M.
‡ que added in Roh. but not in L. and M.
Lib. 5. upon Condition, Sect. 336.

An estate in la terre clercement sans condition. Et la cause est, par ceo que le second feoffee avoit interest en condition pur salvation de son tenancie. Est en cest cas il semble que si primer feoffee apres tel vender a terre, voilie tender le money a le jur assesse, &c. a le feoffor, ceo aura assets bome pur salvation d'estat de le second feoffee, pur ceo que si primer feoffee failli privie a le condition, et issint le tender de aucun de eux deux est assets bome, &c.

"ET s'il faile de payer les deniers, &c."

If a man make a feoffment of lands, to have and to hold to him and his heirs, upon condition, that if the feoffee pay to the feoffor at such a day twenty pounds, that then the feoffee shall have the lands to him and his heirs, if the condition had not proceeded farther, it had been void, for that the feoffee had a fee simple by the first words, and therefore the words subsequent (2) are materially added, (and if he fail to pay the money, &c.)

"Le second feoffee voile tender le summe des deniers, &c."

Albeit the second feoffee be not named in the condition, yet shall hee tender the summe because he is privie in estate, and in judgment of law hath an estate and interest in the condition, (as Littleton here saith) for the salvation of his tenancy. Vid. Sect. 334. And note, he that hath interest in the condition on the one side, or in the land on the other, may tender.

And it is to bee observed also, that the feoffee may tender any money that is currant within the realme, albeit it be forreine coin, so as it be currant by act of parliament, or by the king's proclamation, (3) as hath beene 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 usual manner to carry money in, and then it is the part of the party that is to receive 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 privie to the condition, and by his tender may save the estate of his feoffee, which in all good dealing he ought to doe. (1)

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(1) See L. and M. and Rob. note 1. fol. 216. (2) See note 1. fol. 216. (3) [See Note 104.] [208 a.] [208 a.] [208 a.]
ITEM, si feoffment, soit fait sur condition, que si le feoffor paye certaine somme d'argent al feoffee, adonque bien trerroit a feoffor et a ses heires d'enter* : en'est cas si le feoffor decéve devant le payment fait, et l'heire vont tender al feoffee les deniers, tel tendre est voud, pur eco que le temps de ne quel eco doit entre fuit est passe. Car quant le condition est, que si le feoffor paye les deniers al feoffee, &c. eco est tant a dire, que si le feoffor durant sa vie paye les deniers al feoffee, &c. et quant le feoffor murera, donques le temps de le tendre est passe. Mes avertissement est lou un jour de payment est limit, et le feoffor devra devant le jour, donque poett le heire tender les deniers comme est avancé, pur eco que le temps de le tendre ne fuyt passe per le mort del feoffor. Ausy il sembre, que en tel cas lou le feoffor devra devant le jour de payment, si les executor de le feoffor tendront les deniers al feoffee al jour de payment, cei tendr en acses bon ; et si le feoffee eco refuse, i les heires de feoffor poient enterer, &c. Et le cause est, pur eco que les executor reprentent le person leur testator, &c.

ALSO, if a feoffment bee made upon condition, that if the feoffor pay a certaine summe of money to the feoffee, then it shall be lawfull to the feoffor and his heires 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 be 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. and when the feoffor 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 dieth before the day of payment, if the executor 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 heires of the feoffor may enter, &c. And the reason is, for that the executor represent the person of their testator, &c. (1)

THIS diversitie is plaine and evident, and agreeth with [a] our books, and yet somewhat shall be observed hereupon: for here it appeareth, that seeing no time is limited, the law doth appoint the time, and that is during the life of the feoffor. Wherin divers diversitie are worthy the observation:

First, betweene this case that Littleton here putteth of the condition of a feoffment in fee, for the payment of money where no time is limited, and the condition of a bond for the payment of a summe of money where no time is limited: for in such a condition of a bond the money is to be payd presently, that is, in convenient time. [b] And yet in case of a condition of a bond there is a

* &c. added in L. and M. and Roh.
[b] donques added in L. and M. and Roh.
[b] que not in L. and M. nor Roh.

(1) [See Note 106.]
2 diversiteit betweene a condition of an obligation, which concerns the doing of a transitory act without limitation of any time, as payment of money, delivery of charters, or the like, for there the condition is to bee performed presently, that is, in convenient time; and when

[208. b.] 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 seoffiment, &c. if the obligee doth not

3 hasten the same by request. In case where the condition of the obligation is locall, there is also a diversiteit, when the concurrence of the obligor and the obligee is requisite, (as in the said case of the seoffiment) and when the obligor may performe it in the absence of the obligee, as to knowledge satisfaction in the court of kng's bench, [*] although the knowledge of satisfaction is locall, yet because he may doe it in the absence of the obligee, he must doe it in convenient time, and hath act time during his life.

4 Another diversiteit is, where the condition concerneth a transitory or locall act, and is to be performed to the seoffee 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. tenders to C. and he refuseth, the bond is forfeited, as in this section shall be said more at large.

5 Another diversiteit is betweene a condition of an obligation, and a condition upon a seoffiment, where the act that is locall is to be done to a stranger, and where to the obligee or seoffee himself. As if one make a seoffiment in fee, upon condition that the seoffee shall intrust a stranger, and no time limited, the seoffee shall not have time during his life to make the seoffiment, for then he should take the profits in the meantime to his own use, which the stranger ought to have, and therefore hee ought to make the seoffiment as soon as conveniently he may; and so it is of the condition of an obligation. But if the condition be, that the seoffee shall intrust the seoffor, there the seoffee hath time during his life, for the privitie of the condition between them, unless he be hastened by request, as shall bee said hereafter.

6 Another diversiteit is, when the obligor or seoffor is to encoffe a stranger, as hath been said, and when a stranger is to encoffe the seoffee or obligee: as if A. encoffe B. of Black Acre, upon condition that if C. encoffe 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 collateral, 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 have time during his life to performe it. As if the condition of an obligation bee, to grant an annuity or yeerely rent to the obligee during his life, payable yearely at the feast of Easter, this annuity or yeerely rent must be granted before Easter, or else the obligee shall not have it at that feast during his life, et sic de similibus; and so was it resolved by the judges [*] of the common pleas in the argument of Andrews's case, which I my selfe heard.

8 Lastly, When the obligor, seoffor, or seoffee is to doe a sole act or labour, as to goe to Rome, Jerusalem, &c. in such and the like cases, the obligor, seoffor, or seoffee, hath time during his

[209. a.] life, and cannot be hastened by request. And so it is if a stranger to the obligation or seoffiment 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 as now it appeareth that either 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 [1]; and this may the ordinarie doe if there be neither executor nor administrator as hath beene said.

"Et le feoffor refuse, les heirez del feoffor potent enterr, &c." 

Nota, a tender by the executors or administrators, and a refusall, doth give the heire of the feoffor a title of entrie. And here by this (2) is a diversitie implied, when a tender and refusall shall give a third person title of entrie.

If a man be bound to A, in an obligation with condition to enfeoff B. (who is a meere stranger) before a day, the obligor doth offer to enfeoff B. and he refuseth, the obligation is forfeit, for the obligor hath taken upon him to infeoff him, and his refusall cannot satisfie the condition, because no feomment is made; but if the feomment 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 save the bond, because he himselfe upon the matter is the cause wherefore the condition could not be performed, and therefore shall not give himselfe cause of action. But if A. be bound to B. with condition that C. shall enfeoff D. in this case if C. tender, and D. refuse, the obligation is saved, for the obligor himselfe undertaketh to doe no act, but that a stranger shall enfeoff a stranger. And it is holden in bookes [3] that in this case it shall be intended, that the feomment should be made for the benefit of the obligee. Some to reconcile the bookes seeme to make a difference between an express 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 be the error of the reporter, and the records themselves are necessary to be scene; for the law herein is, as it hath beene before declared.

If I. enfeoffee one in fee upon condition to enfeoff J. S. and his heires, the feoffee tenders the feomment to J. S. and he refuseth it, the feoffor may re-enter, for by the expresse intent of the condition, the feoffee should not have and retaine any benefit or estate in the land, but is as it were an instrument to convey over the land.

But in that case, if the condition were to make a gift in tayle to J. S. and he refuseth it, and a tender and refusall is made, there the feoffee shall not re-enter, for that it was intended that the feoffee should have an estate in the land. And so it is if a feomment bee made upon 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 re-enter, because the feoffee was to retaine the land; which points are worthy of due observation.

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 he and the executors also are privies in law.

"Le person del testator, &c." This is to bee understood concerning goods and chattelles either in possession or in action, and the executor doth more actually represent the person of the testator, than the heire doth the person of the ancestor. For if a man bindeth
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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 implied, as before hath beene said (1).

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ET nota, que en tous cases de condition de payment de certaine summe en grosse touchant terres ou tenements, si loyall tender soit un feits refuse, cestuy que dussoit tender le money est de cee assouth, et pleinement discharge per tous temps apres.

THIS is to be understood, that he that ought to tender the money is of this discharged for ever to make any other tender; but if it were a dutie before, though the feoffor enter by force of the condition, yet the debt of dutie remayneth. As if A. borroweth a hundred pound of B. and after mortageth land to B. upon condition for payment thereof; if A. tender the money to B. and he refuseth it, A. may enter into the land, and the land is freed for ever of the condition, but yet the debt remaineth, and may be recovered by action of debt. But if A. without any loane, debt, or dutie preceding infeoff B. of land upon condition for the payment of a hundred pounds to B. in nature of a gratuitue or gift; in that case if he tender the hundred pound to him according to the condition, and he refuseth it, B. hath no remedie therefore; and so is our author in this and his other cases of like nature to be understood.

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ITEM, si le feoffee en mortgage devant le jour de payment que serroit fait a tuy, face ses executors et devie, et son heire enter en le terre comme il devoit, &c. il semble en cest cas que le feoffor doit payer le money al jour assesse al executors, et nemy al heire le feoffee, pur cee que le money al commencement trenchant al feoffee en maner comme un dutie, et serra entendue que l'estate fuit fait pur cause de le prompter de le money per le feoffe, ou pur cause d'auter dutie; et pur ceo le payment ne serra fait al heire, * comme il semble, mes les paroles del condition payent estre tiels, que le payment serra fait al heire. Come si le

ALSO, if the feoffee in mortgage before the day of payment which should be made to him, makes his executors and die, and his heire entreteth into the land as he ought, &c. it seemeth in this case that the feoffor 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 intended 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 words

(1) [See Note.107.] comme il semble, mes les paroles del condition payent estre tiels, que le payment serra fait al Heire, not in L. and M. nor Boh.
le condition fuit, que si le feoffor paya al feoffee, ou a ses heires, tiet summe a tiet jour, &e. la apres la mort le feoffee s'il morust devant le jour limit, * le payment doit etre fait al heire al jour asesse, &e.

words 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 such a day, &e. there after the death of the feoffee, if he dieth before the day limited, the payment ought to be made to the heire at the day appointed, &e.

**PAILERA tiet summe a tiet jour, &e.** Here is implied, that this payment ought to bee real, and not in shew or appearance. For if it be agreed betweene the feoffor and the executors of the feoffee that the feoffor shall pay to the executors but part of the money, and that yet in appearance the whole summe shall be 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 shall not be divested out of the heire, which is a third person, without a true and effectual payment, and not by a shadow or colour of payment, and the agreement precedent doth guide the payment subsequent.

And by this Section also 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 law appoints him to receive the money, but so doth not the law [210. a.] appoint the heire to receive the moneyunless he be named.

**"Doit etre fait al heire al jour asesse, &e."** And here it also appeareth, that if the condition upon the mortgage be to pay to the mortgagor or his heires the money, &e. and before the day of payment the mortgagor dieth, the feoffor cannot pay the money to the executors of the mortgagor: for Littleton saith that in this case the payment ought to be made to the heire. *Et in hoc caso designatio unus persona est exclusive alterius, et expressum factum censusare tacitum*; and the law shall—never seek out a person, when the parties themselves have appointed one. But if the condition be to pay the money to the feoffor, his heires or executors, then the feoffor hath election to pay it either [m] to the heire or executors.

If a man make a feoffment in fee upon 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 dieth, 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 upon condition that if the feoffor pay to the feoffee his heires or assigns 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 assignes in law; and the reason of this diversitie is this, 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 over. But in the other case the feoffee hath an estate in the land which he may assigne over; and where there may bee assignes.

* donques added in L. and M. and Rob.
sues in deed, the law shall never seckc out or appoint any ass
assignes in law. And albeit the feoffee made no assignment of the
estate, yet the executors cannot be assignees, because assignees were
only intended by the condition to be assignees of the estate; and so
was it resolved (6) Mich. 23 & 24 Eliz. by the two chiefe justices in
the court of wards betweene Randall and Browne, which I observed.
But if the condition be to pay the money to the feoffee his heires
assignes, and the feoffee make a feoffment over, it is in the elec
tion 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 feof
for, the law will not enforce the feoffor to take knowledge of the
second feoffment, nor of the validity thereof, whether the same be
effectual or not, but at his pleasure, and the first feoffee and his
heires are expressly named in the condition (1).

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ITEM, sur tild case de feoffment
en mortgage, question ad este de
mande en quel lieu le feoffor est te
mus de tender les deniers a le feoffee
al jour ascense, Ctc. Et ascens ont dit,
qu sur fa terre assinat & tenus en mor
gage, pur ceo que le condition est de
pandant sur le terre. Et ont dit y que
le feoffor soit sur la terre la prest
paye le money al feoffee al jour as
sence, et le feoffee adonque ne soit pas
la, adonque le feoffor est assout et
excuse de payment de le money, pur
cen que nuit default est en luy. Mes il
semble a ascens que la leyest contrary,
et que default est en luy; car il est te
nus de querer le feoffee s'il soit adon
que en asc ascens auter lieu dans le
foisime de Engleterre. Come si home
soit oblige en un obligation de 20 li.
sur condition endorse sur mesme l'o
bigation, que s'il paya a celuy a que
l'obigation est fait a tild jour 10 li.
ndazonque l'obigation de 20 li. per
sa force, et tenue tenus per nul; ac
cest cas il covient a celuy que just obli
gation

ALSO, upon such case of feoffment
in mortgage, a question
hath been demanded in what place
the feoffor is bound to tender the
money to the feoffee at the day ap
pointed, &c. And some have said,
upon the land so holden in mortgage,
because the condition is depending
upon the land. And they have said
that if the feoffor be upon the land
there ready to pay the money to the
feoffee at the day set, and 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 seke
the feoffee if he bee then in any
other place within the realm of Eng
land. As if a man be bound in an
obligation of 20 pound upon condi
tion endorsed upon the same obliga
tion, that if he pay to him to whom
the obligation is made at such a day
10 pound, then the obligation of 20

(1) [See Note 108.]
	[see L. and M. and Roh.]
	[see L. and M. and Roh.]
	[see not in L. and M.]
	[see not in L. and M. but in Roh.]

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gation de querel etuy a que l'obligation est fait, s'il soit deins Engleterre, et al jour assesse de tendre a luy les dits 10 li. auernct il forfeitera la summe de 20 li. comprise deins l'obligation, &c. Et issint il semble en l'auter cas, &c. Et coment que ascens ont dit, que le condition est dependant sur la terre, encor cee ne prove que le feasans de le condition d'estre performe, corient estre fait sur la terre, &c. nient plus que si le condition fuit que le feoffor ferra a tiel jour, &c. un especial corporall service al feoffee, nient nosmant le lieu ou tiel corporal service serra fait. En tiel cas le feoffor doit faire tiel corporal service al jour limite al feoffee, en quecumque lieu d'Engleterre que le feoffee est, s'il voile aver advantage de le condition, &c. Issint il sembla en l'auter cas. Et il semble a eaux que il serroit plus proberment dit, que l'estate de la terre est dependant sur la condition, * que t a dire que le condition est dependant sur la terre, &c. Sed quere, &c.

"ITEM, sur tiel case de feoffment en margage, question ad estern demande, &c." Here and in other places, that I may say once for all, where Littleon maketh a doubt, and seteth down several opinions and the reasons, he ever setteth downe (*) the better opinion and his owne last, and so be doth here. [n] For at this day this doubt is settled, having beene oftentimes resolved, that seeing the money is a summe in grosse, and collate- rally to the title of the land, that the feoffor must tender the money to the person of the feoffee according to the later opinion, and it is not sufficient for him to tender it upon 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 deliver twenty quarters of wheat, or twenty load of timber, or such like, the obligor or feoffor is not bound to carry the same about and seek the feoffee, but the obligor or feoffor before the day must goe to the feoffee, and know where he will appoint to receive it, and there it must bee delivered. And so note a diversitie betwenee 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: [8] for him to tender it upon the land, because the state must passe by livery.

"Deins

* &c. added L. and M. and Roh.
† est a rms, added L. and M. and Roh.
"Dein le voialm d'Engleterre (1)." For if he be out of the realm of England he is not bound to seeke him, or to goe out of the realme unto him. And for that the seffoors is the cause that the seffor cannot tender the money, the seffor shall enter into the land as if he had duly tendered it according to the condition.

"Un especiall corporall service al seffoors." This is a diversity between a rent issuing out of land, and a corporall service issuing out of land, for it sufficeth (as hath beene said) that the rent bee tendered upon the land, (1) out of which it issueth. But homage or any other special corporall service must be done to the person of the lord, and the tenant ought by the law of conveniency to seeke him to whom the service is to bee done in any place within England.

If a man be bound to pay twenty pound at any time during his life at a place certaine, the obliger cannot tender the money at the place when he will, for then the obligee should bee bound to performfull attendance, and therefore the obligor in respect of the incertainty of the time must give the obligee notice that on such a day at the place limited, he will pay the money, and then the obligee must attend there to receive it: for if the obligor then and there tender the money, he shall save the penaltie of the bond for ever.

The same law it is if a man make a seffoiment in fee upon condition, if the seffor at any time of his life pay the seffee twenty pound at such a place certaine, that then, &c. In this case the seffor must give notice to the seffee 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 seffor meete the obligee or seffee 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 give notice to D. thereof, and request him to be on the land at the day to receive the seffoiment, and in that case he is bound to seeke D. and to give him notice.

“De tender”, or tendre, is a word common both to the English and French, in Latine offere; and in that sense, and with that Latyn word it is always used in the common law. Vide Sect. 514, the tender of the halfe marke. And before, Sect. 333, 334, 337.

BUT if a seffoiment in fee be made, reserving to the seffoor a yerely rent, and for default of payment a re-entrie, &c. in this case the tenant needeth not to tender the rent, when it is behind, but upon the land, because this is a rent issuing out:
Est rent secke. Car si le feoffor soit seisc un foists de cest rent, et puis il vient sur la terre, &c. et le rent luy soit denie, il poete avoir assisie de Novel Disseisin. Car comente que il poete entrer per cause de le condition enfreint, &c. unicore il poete celier, scilicet, de relinquuisir son entree, ou d’aver un assisie, &c. Et isst est diversite, quant al tender de le rent que est issuant hors de la terre, et del tender d’autier summe en grosse, que ne passe issuant hors d’ascun terre.

Here the diversitie appeareth betweene a summe in grosse, and a rent issuing out of the land, as hath beene touched before.

"Uncore il poete celier, scilicet, de relinquuisir son entry, ou de aver un assisie.

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 shall never enter for the condition broken, because he affirmeth the rent to have a continuance, and thereby wayveth the condition. And so it is if the rent had had a clause of distresse annexed unto it, if the feoffor had distressed for the rent, for non payment whereof the condition was broken, he should never enter for the condition broken, but he may receive 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 have a continuance (1).

(1 Roll. Acr. 445, 446.)
(2 Com. 12, 16.)

Et pur ceo il serra bone et sure chose pur celuy que voett faire tel feoiment en mortgage, de mitter un especial lieu lou les deniers seront payes, et le plus especial que est mis, le melier est pur le feoffor. Sicome A. infenfe B. a aver a lay et a ess heires, sur tsel condition, que si A. paga an B. en le Feast de Saint Mi-ichael l’Archangell prochheine a ve- nor, en eglise cathedraill de Paulus en Londres, delus quater heures pro- chheine devant le heures de nooms de gemme le Feast, a le Bood loft de * le Bood

And therefore it will be a good and sure thing for him who shall make such seomont in mortgage, to appoint an especial place (2) where the money shall be payd, and the more especial that it beet put, the better it is for the feoffor. [212. a.] As if A. infenfe B. to have to him and to his heires, upon such condition, that if A. pae to B. on the Feast of Saint Michael the Arch- Angell next comming, in the cathed- ral church of St. Paul’s in London, within foure heures next before the hour

(1) [See Note 111]
(2) [See Note 112]
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Rood de le North doore deins mesme le este, ou le tombe de S. Erkenwald, ou al huis de tiel chappell, ou a tiel pilier, deins mesme l'estige, que algunc bien list al avantdite A. et a unheires d'enter, &c. en tiel case il a besoignes de querer le feoffee en autier lieu, ne d'estre en autier lieu, fors-que en le lieu comprisne en l'endeture, ne d'estre la plus longe temps que le temps specifique en mesme l'endeture, per tender ou payer le money a le feoffee, &c.

than the time specified in the same indenture, to tender or pay the money to the feoffee, &c.

HERE is good counsell and advice given, to set downe in conveyances every thing in certaintie and particulartie, for certaintie is the mother of quietsesse and reposse, and incertaintie the cause of variance and contentions; and for obtaining of the one, and avoyding of the other, the best meanes is, in all assurances, to take counsell of learned and well-experienced men, and not to trust onely without advice to a precedent. For as the rule is concerning the state of a man's bodie, Nullum medicamentum est idem omnibus, so in the state and assurance of a man's land, Nullum exemptum 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 devout man, and lieth buried in the south isle, above the quire in Saint Paul's church, where the tombe yet remaineth, that Littleton speaketh of in this place: he flourished about the yeare of our Lord 680.

The residue of this Section and the ( &c.) are evident.

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ITEM, en tiel case, lou le lieu † de payment est limite, le feoffee est † oblige de receuoir le payment autier lieu forsque en mesme le lieu issint limit. Mes uncorre si il re- ceuoit le payment en autier lieu cee est auec bonne, et auxz fort pur le feoffor sieme le receuist aut ceste en mesme le lieu issint limit, &c.

† de payment, not in L. and M. nor Roh.

ALSO, in such case, where the place of payment is limited, the feoffee is not bound to receive the payment in any other place but in the same place so limited. But yet if he doe receive the payment in another place, this is good enough and as strong for the feoffor as if the receipt had beene in the same place so limited, &c.

† pas added in L. and M. and Roh.

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HEREBY it appeareth that the place is but a circumstance; and therefore if the obligee receiveth it at any other place, it is insufficient, though he be not bound to receive it at any other place. 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 (1).

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ALSO, in the case of feoffment in mortgage, if the feoffor payeth to the feoffee a horse, or a cup of silver, or a ring of gold, or any such other thing in fulfil satisfaction of the money, and the other receiveth it, this is good enough, and as strong as if hee had received the summe of money, though the horse or the other thing were not of the twentieth part of the value of the sum of money, because that the other hath accepted it in full satisfaction.

HEREUPON are many diversities worthy of observation.

First, there is a diversitie, when the condition is for payment of money; and when for the deliverie 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 deliverie 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 recognizance of twenty 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 collateral conditions, though the obligee or feoffee himselfe accept it.

Secondly, in case when the condition is for payment of money, there is a diversitie 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 an horse or any collateral thing in satisfaction of the money, it is no performance of the condition, because the condition in that case is strictly to be performed. But if the condition be, that a stranger shal pay to the obligee or feoffee a sum of money, there the obligee or feoffee may receive a ho se, &c. in satisfaction.

Thirdly, where the condition is for payment of twenty pounds, the obligor or feoffor cannot at the time appointed pay a lesser summe in satisfaction of the whole, because it is apparent that a lesser

(1) [See Note 113.]
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lesser summe of money cannot be a satisfaction of a greater. But if the obligee or feoffee doe at the day receive part, and thereof make an acquittance under 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 limited by the condition, and the obligee or feoffee receiveth it, this is a good satisfaction. Fourthly, not only things in possession may be given in satisfaction, (whereof Little-von puttheth 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.

If the obligor or feoffor be bound by condition to pay an hundred marks at a certaine day, and at the day the parties doe account together, and for that the feoffor or obligee did owe twenty pound to the obligor or feoffor, that summe is allowed, and the residue of the hundred marks paid, this is a good satisfaction, and yet the twenty pound was a chose in action, and no payment was made thereof, but by way of retainer or discharge (1).

"En plene satisfaction." Nota, in satisfaction and in full satisfaction is all one.

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ITEM si home enfeoffa un auter * sur condition, que il et ses heires resdront a un estrange home & a ses heires un annuel rent de 20s. &c. et si il en ses heires failont de payment de ceo, que adonques bien tirroit al feoffor a ses heires de entrer, ceo est bon condition : et uncere en cest cas, c'est que tiel annuel payment est appele en l'endenture un annuell rent, ceo n'est pas propernement rent. Car s’il servoit rent, il corrirent entre rent service, ou rent charge, ou rent seche, et il n’est ascun de eux. Car si l'estrange fuit seissie de ceo, et puis il faut a lauy denie, il n’avera unque assise de ceo, pur ceo que il n’est * pas issuant ilhors d’ascun tenements ; et issaint l'estrange n'ad ascun remedie, si tid annial rent soit aderer en cest cas, mes que le feoffor ou ses heires point entrer, &c. Et uncere si le feoffor ou ses heires entront pur default de payment, adonque tiel rent est ale a tous jours. Et issaint tiel rent § n’est forsque

ALSO if a man infeoff another upon condition, that hee and his heires shall render to a stranger and to his heires a yearly rent of 20 shillings, &c. and if hee or his heires faile 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 anniall payment be called in the indenture a yearly rent, this is not properly a rent. For if it should bee a rent, it must bee rent service, rent charge, or a rent seke, and it is not any of these. For if the stranger were seised of this, and after it were denied him, hee shall never have an assise of this, because that it is not issuing out of any tenements; and so the stranger hath not any remedy, if such yearly 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 payment, then such

(1) [See Note 114.]

* enfe added L. and M. and Roh.
† pars not in L. and M.
‡ hors not in L. and M.
§ n’es—est, L. and M. and Roh.

[213. a.]
such rent is taken away for ever. And so such a rent is but as a paine set upon 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.

"RENDRONT a un estrange home un annual rent, &c."

This reservation is meerly void [a] for the reasons hereafter in this section alluded by Littleton, and also for that no estate moveth from the stranger, and that he is not partie to the deed.

And albeit it be a voyde reservation, 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 annuell rent) that then, &c. yet it appeareth that the condition is good, and annuell rent shall bee taken for an annuell 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 observed, that words in a condition shall bee taken out of their proper sense, ut res magis valeat quam perceat, and so in like cases it is holden [b] in our bookes.

But if A. bee seised of certaine lands and A. and B. joyne in a feoffment in fee, reserving a rent to them both and their heires, and the feoffee grant that it shall be lawfull for them and their heires to distraine for the rent, this is a good grant of a rent to them both, because bee is partie to the deed, and the clause of distress 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 upon this diversitie are all the booke [c] which primfacie seeme to vary, reconciled.

"Car s'il serra rent, il covient entre rent service, rent charge, ou rent secke, et il n'est nul de eux." This is a good logical argument à divisione, & argumentum à divisione est fortissimum in legre. [d] Littleton useth this argument elsewher, where see more of this matter.

"Pur default de payment." Note here, seeing it is but a summe in grosse, there need no demand of the rent; for Littleton here saith, 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.

† pur creo que nuil heus est limes eu le pay-ment serra fait, et not in L. and M. nor Boh. " here not in L. and M. nor Boh.
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AND here note two things: one is, that no rent (which is properly said a rent) may be reserved upon 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 reserved to any strange person. But if two joynentants make a lease by deed intented, reserving to one of them a certain yearely rent, this is good enough to him to whom the rent is reserved, for that he is privie to the lease, and not a stranger to the lease.

Le feoffor, donor, &c. ou a lous heires, &c." Hereby it may seem that if a man make a feoffment, gift, or lease, that (omitting himselfe) he may reserve a rent to his heires (1). But Littleton is not so to be understood; his meaning is, that either the feoffor, &c. may reserve the rent to himselfe only, or to himselfe and his heires. And yet it is holden [2] in our booke, that a man may make a feoffment in fee reserving a rent of forty shillings to the feoffor for wearmne of his life, and after his deceasement, a pound of comynge to his heires, that this is good.

If a man make a feoffment in fee, reserving a rent to him or his heires, it is good [1] to him for wearmne of his life, and void to his heire.

Mes si deux joynentants font un lease per fait indent. &c." (1) This case being by deed intented, is evident, and it hath been touched before; but if that two joynentants without a deed intented make a lease for life, reserving a rent to one of them, it shall enure to them both in respect of the joynnt reversion. And so it is of a surrender to one of them, it shall enure to them both.

If two joynentants, the one for life, and the other in fee, joyned in a lease for life, or a gift in tayle, reserving a rent, the rent shall enure to them both; for if the particular estate determine, they shall be joynentants againe in possession. But if tenant for life, and he in the reversion joyned in a lease for life, or a gift in tayle by deed, reserving a rent, this shall enure to the tenant for life onely, during his life, and after to him in the reversion, for every one grants that which he may lawfully grant; and if at the common law they had made a feoffment in fee generally, the feoffice should have

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1. Le feoffor, donor, &c. ou a lous heires, &c.
2. Mes si deux joynentants font un lease per fait indent. &c.

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have holden of the tenant for life during his life, and after of him in reversion, and so it was holden [g] in the King's Bench.

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The second thing is, that no entry nor reentry (which is all one) may be reserved or given to any person but only to the feoffor, or to the donor, or to the lessor, or to their heirs: and such reentry cannot be given to any other person. For if a man letteth land to another for term of life by indenture, rendering to the lessor and to his heirs a certain rent, and for default of payment a reentry, &c. if afterwaer the lessor by a deed granteth the reversion of the land to another in fee and the tenant for term of life at torne, &c. if the rent be after behind, the grantee of a reversion may distraine for the rent, because that the rent is incident to the reversion; but he may not enter into the land and ouste the tenant, as the lessor might have done, or his heirs, if the reversion had beene continued in them, &c. And in this case the entry is taken away for ever; for the grantee of the reversion cannot enter, caus: supr: And the lessor nor his heirs cannot enter; for if the lessor might enter, then he ought to be in his former state, &c. am this may not bee, because hee hath aliened from him the reversion.

Que nul entrice. "Cur."

Here Littleton reciteth one of the maximes of the common law; and the reason hereof is, for avoyding of maintenance, suppression of rights, and stirring up of suites: and therefore nothing in action, entrice, or re-entrice, can bee granted over; for so under colour thereof pretended titles might bee granted to great men, whereby right might bee trodden downe, and the weake oppressed, which the common law forbiddeth, as men to grant before they be in possession.

"Pur

* est not in Roh. but in L. and M. 1 certeine added in L. and M. and Rob. ne added in L. and M. and Rob. § en—a in L. and M. and Rob.

reeter—rent in L. and M. and Rob.
upon Condition.

"Pur defaut de payment en reentrie, &c." Hereupon is to bee collected divers diversities. First, betweene a condition that requireth a re-entrie, and a limitation that ipso facto determineth the estate without any entry. Of this first sort no stranger, as Littleton saith, shall take any advantage, as hath beene said. But of limitations it is otherwise. As if a man make a lease quoniamque, that is, until J. S. come from Rome, the lessor grant the reversion over to a stranger, J. S. comes from Rome, the grantee shall take advantage of it and enter, because the estate by the express limitation was determined.

So it is if a man make a lease to a woman quamdui casta vixerit, or if a man make a lease for life to a widow, si iamdui in furori vi- dutate vixeret. So it is if a man make a lease for a 100 yeares if the lessee live so long, the lessor grants over the reversion, the lessee dies, the grantee may enter, causad quod suprad.

2. Another diversiteit is betweene a condition annexed to a freehold, and a condition annexed to a lease for years.

For if a man make a gift in taile for a lease for life upon condition, that if the donee or lessee goeth not to Rome before such a day the gift or lease shall cease or be void, the grantee of the reversion shall never take advantage of this condition, because the estate cannot cease before an entrie; but if the lease had beene but for yeares, there the grantee should have taken advantage of the like condition, because the lease for yeares ipso facto by the breach of the condition without any entry was void; 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 ceremony. And of a voide thing an estranger may take benefit, but not of a voidable estate by entry.

"Al feccion, ou al donor, &c. ou a lour heires, &c." Here is to be observed a diversiteit betweene a reservation of a rent and a re-entrie; for (as it hath beene said) a rent cannot be reserved to the heire of the feecor, but the heire may take advantage of a condition, which the feecor could never doe. As if I infeoffee another of an acre of ground upon condition that if mine heire pay to the feecor, &c. 20 shillings, that he and his heire shall re-enter, this condition is good; and if after my decease my heire pay the 20 shillings, hee shall re-enter, for he is privy in blood, and enjoy the land as heire to me.

"Forsquae tantsolement al feecor, &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, ecclesiastical or temporal, make a lease, &c. upon condition, his successor may enter for the condition broken, for tity are privy in right.

And so if a man have a lease for yeares and demise or grant the same upon condition, &c. and die, his executors or administrators shall enter for the condition broken, for they are privy in right, and represent the person of the dead.

"215. &]" If cestuy que use had made a lease for yeares, &c. upon condition, the feecor should not enter for the condition broken, for they are privy in estate, but not privy in blood.

Another diversiteit is in case of a lease for yeares, where the condition is that the lease shall cease, or be void, as is aforesaid, and where the condition is, that the lessor shall re-enter, for there the
the grantee, as *Littleton* saith, shall never take benefit of the condition.

And it is to be observed, that where the estate or lease is *ipso facto* void by the condition or limitation, no acceptance of the rent after can make it to have a continuance: otherwise it is of an estate or lease voidable by entry. (1)

Another diversitie 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 unto 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 give an entrice to the lessor, the lessor himselfe and his heires shall not onely take benefit of it, but also his assignee and the lord by escheat, every one for the condition in law broken in their owne time. Another diversity there is betweene the judgement 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 reversion could (as hath been said) take advantage of a re-entrie by force of any condition. For at the common law, if a man had made a lease for life reserving a rent, &c. and if the rent be behind a re-entrie, and the lessor grant the reversion over, 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 advantage thereof, and upon demand of the rent, and non-payment, he may re-enter. By which act it is provided, that as well every person which shall have any grant of the king of any reversion, &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 have like advantage against the lessees, &c. by entry for non-payment of the rent, or for doing of waste or other forfeiture, &c. as the said lessors or grantors themselves ought or might have had. Upon this act divers resolutions and judgements have beene given, which are necessary to be knowne.

1. That the said statute is generall, viz. [b] that the grantee of the reversion of every common person, as well as of the king, shall take advantage of conditions.

2. That the statute doth extend to grants made by the successor 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 talle.

4. That where the statute speakes of grantees and assignees of the reversion, [d] that an assignee of part of the state of the reversion may take advantage of the condition. As if lessee for life be, &c. and the reversion is granted for life, &c. So if lessee for years, &c. be, and the reversion is granted for yeares, the grantee for yeares shall take benefit of the condition in respect of this word (executors) in the act.

5. That a grantee of part of the reversion shall not [e] take advantage of the condition; as if the lease be of three acres, reserving

(1) [See Note 117.]
reserving a rent upon condition, and the reversion 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.

6. That in the king's case, the condition in that case is not destroyed, but remains still in the king.

7. By act in law a condition may be 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 on the common law, and the lessor having issue two sonsnes, 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 been said in the chapter of Rents.

8. If a lease for life be made, reserving a rent upon condition, &c. the lessor levies a fine of the reversion, he is grantee or assignee of the reversion; but without attornment hee shall not take advantage of the condition, for the makers of the statute intended to have all necessary incidents observed, otherwise it might be mischievous to the lessee. (2)

9. There is a diversity betweene a condition that is compulsory, and a power of revocation that is voluntary: for a man that hath a power of revocation may by his owne act extinguish his power of revocation in part, as by levying 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 was resolved [3] in the case of Shrewsbury's case in the court of wards, Passch. 39 Eliz. and Mich. 40 & 41 Eliz.

10. If the lessor bargain and sell the reversion by deed indented and inrolled, the bargainee is not in the fier by the bargainor, and yet hee is an assignee within the statute. So if the lessor grant the reversion in fee to the use 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 be 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 entrith or claimeth for mortmaine, or the like, shall not take benefit of this statute.

11. If the lessor in the case before bargain and sell the reversion by deed indented and inrolled, or if the lessor make a feoffment in fee, and the lessee re-enter, the grantee or fooffee shall not take any advantage of any condition, without making notice to the lessee.

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 every forfeiture, by force of a condition, but only of such conditions as either are incident to the reversion, 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 preserving of woods, or such like, and not for the payment of any summe in grosse, delivery of corne, wood, or he like, so as other forfeiture shall be taken for other forfeitures like to those examples which were there put.

(2) [See Note 118.]
put, (videlicet) of payment of rent, and not doing of waste, which
are for the benefit of the reversion. (1)

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ALSO if lord and tenant bee, and
the tenant make a lease for term
of life, rendering to the lessor and
his heires such an annual rent, and
for default of payment a re-entrée, &c. if after the lessor dyeth without
heire during the life of the tenant
for life, whereby the reversion com-
meth to the lord by way of escheat,
and after the rent of the tenant for
life is behind, the lord may distrain
the tenant for the rent behind; but
he may not enter into the land by
force of the condition, &c. because
that hee is not heire to the lessor, &c.

(L. N. B. 345. b.)

AL seignieur per voy de escheat, &c.

Note, here it appeareth, that the lord by escheat shall
distraine for the rent, and yet the rent was reserved to the lessor
and his heires; but both assignees in deed and assignees in law
shall have the rent, because the rent being reserved of inheritance
to him and his heirs, is incident to the reversion, and goeth with
the same. But if the rent were reserved to him and his assignees,
and the lessor assigned over the reversion, and dyeth, the assignee
shall not have the rent after his decease, because the rent deter-
mined by his death, for that it was not reserved to him, his heirs,
and assignees.

Mes il ne poët entrer en la terre pur force del condition, &c.

Hereby it appeareth, that at the common law neither assignees in
deed nor assignees in law could have taken the benefit of either entrie
or re-entrée, by force of a condition.

Pur ego que il n'est pas heire al lessor, &c.

The gardian in chivalrie (1) or in socage shall in the right of the
heire take benefit of a condition by entrie or re-entrée, by the com-
mon law, and so it is here implied.

(1) [See Note 118.]

lesseor— lesseor, L. and M. and Rob.

Sect.
ITEM si terre soit grantnt a un home pur terme de deux ans sur
*home pur terme de deux ans sur
condition, que s'il payeroit al
*conditio, que s'il payeroit al
pastor deins les dits deux ans 40
pastor deins les dits deux ans 40
marks,\† adonques il averoit la terre a
marks,\† adonques il averoit la terre a
luy et a ses heires, &c. en est case si
luy et a ses heires, &c. en est case si
grante enter per force de le grant,
grante enter per force de le grant,
mais aucune livery de seisin fait a luy
mais aucune livery de seisin fait a luy
per le grantor, et puis il paya al
per le grantor, et puis il paya al
grante les 40 markes deins les deux ans,
grante les 40 markes deins les deux ans,
mais il n'ad riens en la terre forsqu*'
grante les 40 markes deins les deux ans,
grante les 40 markes deins les deux ans,
mais il n'ad riens en la terre forsan
mais il n'ad riens en la terre forsan
per terme de deux ans, pur cee que nul
per terme de deux ans, pur cee que nul
livery de seisin a luy fait fut il commencement.
livery de seisin a luy fait fut il commencement.
Car s'il averoit francktenement et fec en est case, car cee que il ad perfornment le condition, donque
Car s'il averoit francktenement et fec en est case, car cee que il ad perfornment le condition, donque
il averoit francktenement per force
il averoit francktenement per force
dei prime grantnt, l'ou nul livery de
dei prime grantnt, l'ou nul livery de
seisin de cee fait fait, que serroit
seisin de cee fait fait, que serroit
\t inconvenient, &c. Mes si le grantor
\t inconvenient, &c. Mes si le grantor
nuit fai livery de seisin al grantee per
nuit fai livery de seisin al grantee per
force de la grant, donque il averoit le
force de la grant, donque il averoit le
grantee le francktenement et le fec sur
grantee le francktenement et le fec sur
same the condition.
same the condition.

A LSO if land be granted to a
man for terme of two yeares
upon such condition, that if he
shall pay to the grantor within the
said two yeares fortie marks, then he
shall have the land to him and to his
heyers, &c. in this case if the grantee
enter by force of the grant, without
any livery of seisin made unto him
by the grantor, and after he payeth
the grantor the forty marks within
the two yeares, yet he hath nothing
in the land but for terme of two
yeares, because no livery of seisin
was made unto him at the beginning.
For if he should have a freehold and
fee in this case, because he hath
performed the condition, then he
should have a freehold by force of
the first grant, where no livery of
seisin was made of this, which would
be inconvenient, &c. But if the
grantor had made livery of seisin to
the grantee by force of the grant,
then should the grantee have the freehold and the fee upon the same

HERE sixe things are to be observed. First, Littleton here put-
*tech an example of a condition precedent (1). Secondly, that
such a condition which createth an estate may be made by paroll
without deed. Thirdly, that livery of seisin in this case must be
made before the leasee enter, (as Littleton here saith at the begin-
ing) for after his enbre livery made to him that is in possession is
void, as hath been said. Fourthly, that if no livery of seisin be
made, that no fee simple doth passe, although the money be paid.
Fifthly, that it is inconvenient that the fee simple should passe in
this case without livery of seisin. Sixthly, that argumentum ab incon-
veniencia, is forculc in law, as often hath beene and shall be observed.
See more of this kind of condition in the Section next following (2).

"Et a ses heires, &c." Here (&c.) implyeth an estate in taille,
or a lease for life.

\* same not in L. and M. nor Roh.
\† neue added in L. and M. and Roh.
\t inconvenienc. &c.—encontre reason in L. and
\t M and Roh.

(1) See some observations on conditions
precedent, and conditions subsequent, in the
last note upon this chapter.
(2) [See Note 119.]
ITEM si terre soit graunt a un home pur terme de 5 ans, sur condition, que s'il pay al grantor deins les deux primer ans 40 markes, que adonque il averoit fee, ou auertemment forceque pur terme de les 5 ans, et livere de seisin est fait a luy pur force de le graunt, ore il ad fee simple conditionell, &c. Et si en ceo case le granteeze ne paia my al grantor les 40 markes deins les primers deux ans, donques Immediate aprés meemes les deux ans passes, le fee et le franktement est et sera adjudge en le grantor, pur ceo que le grantor ne poez aprés les dits deux ans maintenant enter sur le granteeze, pur ceo que le grantee ad encore title per trois ans d'aver et occupier la terre per force de mesme le grantor. Et issaint pur ceo que le condition del part le granteeze est enfreint, et le grantor ne poez enterrer, la ley mittera le fee et le franktement en le grantor. Car si le granteeze en ceste case fut wast, donques aprés le enfreinder de le condition, &c. aprés les deux ans, le grantor aexera son breif de wast. Et ceo est bone profe adeonde, que le reversion est en luy, &c.

ALSO if land be granted to a man for term of five years, upon condition, that if he pay to the grantor within the two first years forty markes, that then he shall have fee, or otherwise but for term of the five years, and livery 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 grantee does not pay to the grantor the forty markes within the first two years, then immediately after the said two years past, the fee and the freehold is and shall be adjudged in the grantor, because that the grantor cannot after the said two years presently enter upon the grantee, for that the grantee hath yet title by three years to have and occupy the land by force of the same grant. And so because that the condition of the part of the grantee is broken, and the grantor cannot enter, the law will put the fee and the freehold in the grantor. For if the grantee in this case makes wast, then after the breach of the condition, &c. and after the two years, the grantor shall have his writ of waste. And this is a good prooe then, that the reversion is in him, &c.

"ORE it ad fee simple conditionell, &c." The like is of an estate in talle, or for life. Many are of opinion against Littleton in this case, and their reason is, because the fee simple is to commence upon a condition precedent, and therefore cannot passe until the condition bee performed; and that here Littleton of a condition precedent doth (beof the performance thereof) make it subsequent: and for prooof of their opinion they avouch many successions of authorities that no fee simple should passe before the condition performed. 31 E. 1. tit. seoffements & faits 119. A. letteth a mannor to B. for term of twenty years, and the deed would, that after the term of twenty yeares that B. and his heirs should hold the said mannor for ever by twelve pounds rent, A. taketh a wife, and dyeth before the term be past, the wife of A. demands dower. And there Wayland chiefo justice saith, that the fee and the frank-tenement doth repose in the person of the lessor untill the term be past, for before that the condition is not performed; for if the lessor had aliened the land before the end of the term, B. should not recover by a writ of assise, and by the death of the lessor the chief land should
should have had the wardship of the heire of the lessor, and by judgement the wise recovered dower, for the termor could not have fee, all which be the words of that booke.

13 E. 2. tit. vouches 265. I. letteth lands to B. for eight yeares, and if the lessor pay not an hundred markeis to the lessee at the end of the terme, that then he shall have fee: by the non-payment of the money, the fee and frankentenement accrueith to him, and before, the lessee cannot be impieled in a pracie, neither shall he vouch.

[y] 7 E. 3. 10. I. letteth certaine lands to N. for the terme of ten years, rendering a hundred shillings by the yeare to him and his heires, and granted by deed, that if he held the lands over to him and his heires, that he should render by the yeare twenty pounds: the lessee during the terme brought an action of debt for the rent. And there Herve chiefe justice of the common pleas giveth the rule, that during the terme the lessee had but for yeares, and therefore the action of debt maintainable.

[y] 44 E. 3. tit. attain. 22 and 43 Ass. p. 41. D. and A. incoffe the two plaintiffs in the assise, they let those lands to S. for termore of nine yeares, upon condition, that if the plaintiff in the assise pay a hundred shillings to S. during the terme, that S. shall have it but for nine yeares, and if they pay it not, that S. shall have 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 granteth the residue of the terme to R. and within the terme of nine yeares the plaintiffs in the assise pay the hundred shillings to S. R. continueth his possession after the terme, and incoffe D. which incoffeeth the lord Farnival, against whom and others, without any claim or entry made by the plaintiffs, after the nine yeares ended, he brought his assise, and after adijournment recovered.

[x] 10 E. 3. 39. and 40. R. doth let certaine lands to J. for terme of twelve yeares, and in suretie of his terme he maketh a charter of the fee upon condition, that if he be disturbed within the terme, that he cannot hold the lands until the end of the terme, that then he shall hold the lands to him and his heires for ever, and seizin was delivered upon the one charter and the other. R. within the terme plowed and sowed the land, and tooke the profits against the will of J. and J. upon this disturbance had fee and recovered in assise.

6 R. 2. tit. Quid juris clamat. 20. If a lease be made for a terme upon condition, if the lessee pay a certain summe within the terme, that then he shall have fee, if he pay the money he shall have the fee, but if before the day of payment the lessor levies a fine to another, the lessee ought to attorn by protestation, and if he pay the money, the conssue shall have it, and the conssue shall have the rent reserved until the day of payment; and if land be letten for terme of yeares upon condition, that if the lessee be ousted within the terme by the lessor, that he shall have fee, if he be ousted, he shall have fee by the condition, and notwithstanding he shall not have any assise, but he must have possession after the ouster, and of this he shall have an assise.

And generally the bookees (a) are cited that make a diversitie between a condition precedent and a condition subsequent.

And lastly, they cite Dier, [a] 10. Eliz. 281, and in Say and Ful ler's case, Pl. Com. 272, the opinions of Dyer and Browne.

Notwithstanding al this there are those that defend the opinion of Littleton, both by reason and authority. By reason, for that by the
the rule of law a livery of seisin must pass a present freehold to some person, and cannot give a freehold in futuro, as it must do in this case, if after livery of seisin made the freehold and inheritance should not pass presently, but expect until the condition be performed; and therefore if a lease for yeares be made to begin at Michaelmas, the remainder over to another in fee, if the lessor make livery of seisin before Michaelmas, the livery is void, because if it should works at all it must take effect presently, and cannot expect.

Secondly, they say that when the lessor makes livery to the lessee, it cannot stand with any reason that against his own livery of seisin a freehold should remaine in the lessor, seeing there is a person able to take it. But if a man by deed make a lease for yeares, the remainder to the right heires of I. S. and the lessor make livery to the lesse secundum formam charta, this livery is void, because during the life of I. S. his right heire cannot take (for nemo est hares viventis), and in that case the freehold shall not remaine in the lessor, and expect the death of I. S. during the termes; for albeit I. S. die during the termes, yet the remainder is void, because a livery of seisin cannot expect.

And they say further, that seeing all the booke aforesaid prove that such a condition is good, and that the livery made to the lesse is effectual, by consequence the freehold and inheritance must passe presently or not at all.

And it is not rare, say they, in our booke that words shall be transposed and marshalled so as the feoffment or grant may take effect. [8] As if a man in the moneth of February make a lease for yeares reserving a yearly rent payable at the feasts of Saint Michael the Archangell, and the Annunciation of our Lady, during the termes, the law (in this case of reservation) shall make transposition of the feasts, viz. at the feasts of the Annunciation, and of Saint Michael the Archagell, that the rent may be paid yearesly during the termes. And so it is [c] in case of a grant of an annuitle. And further they take a diversitie in this case betweene a lease for life and a lesse for yeares. For in case of a lease for life with such a condition to have feve, they agree that the fee simple passeth not before the performance of the condition, for that the livery may presently work upon the freehold; but otherwise it is in the case of a lease for yeares. Also they take a diversitie between inheritance that lie in grant and inheritance that lie in livery. For they agree that if a man grant an advowson for yeares upon condition, that the gratee pay twenty shillings, &c. within the termes, that then he shall have feve, the gratee shall not have feve until the condition be performed. Et sic de similibus. But otherwise it is where livery of seisin is requisite, and therefore, if the king make such a lease for yeares upon such a condition, the fee simple shall not pass presently, because in that case no livery is made.

They also make severall answers to the authorities before cited. For as to the case in 31 E. 1. they say that either the case is mis-reported, or else the law is against the judgement. For the case is but this, that a man make a lease of a manner to B. for twenty yeares and that after the twenty yeares B. shall hold the manner to him and his heires by 32 pound rent, and (as it must be intended) maketh livery of seisin, in this case it is cleere (say they) that B. hath a fee simple maintenamt, 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 John de Marre made a charter to John de Burford of fee simple, and
and the same day it was covenanted between them that John de Bursford should hold the same tenements for eight years, and if he did not pay a hundred marks at the end of the term, that the land should remain to John de Bursford and his heirs. In which case, say they, there is direct repugnancy; for, first, the charter of the fee simple was absolute, and after the same day it was covenanted between them, &c. this covenant being made after the charter, could neither alter the absolute charter, nor upon a condition precedent give him a fee simple that had a fee simple before.

To all the other books, viz. 7 E. 3. 10 E. 3. 10 Ann. 44 H. 3. 43 Ann. and 6 H. 4. they say, that being rightly understood they are good law; for in some of these books, as namely in 10 E. 3. 10 Ann. &c. it appeareth that there was a charter made in safety of the tenure, which, say they, must be intended that, viz. a man maketh a lease for yeares, the leasee entereth, and the lessor maketh a charter to the leasee, and thereby doth grant unto him, that if he pay unto the lessor a hundred marks during the term, that then he shall have and hold the lands to him and to his heirs.

In this case, say they, there need no livery of seizin, but doth ensue as an executory grant by increasing of the state, and in that case, without question, the fee simple passeth not before the condition performed.

And therefore Littleton wisely putteth his case of an estate made all at once by one conveyance, and a livery made thereafter.

For Littleton himselfe is in the section before saith, that in that case without a livery making passeth of the freehold and inheritance.

And this diversity (say they) is proved by books; and thereupon they cite [a] 39 E. 3. 54. In a writ of dower the tenant vouch'd to warranty; the vouthee as to part pleaded that the husband was never seised of any estate whereas she might be endowed; as to the remainder the tenant pleaded that he leased to the husband in gage upon condition that if the lessor paid ten marks at a certaine day, that he should re-enter, and if he failed of payment, that the land should remaine to the husband and his heirs, 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 be a good plea: Ergo, the fee simple pass'd by the livery, otherwise the plea had amounted that the husband was never seised, &c. And say they, that it cannot be intended that the judges should be of one opinion in Tymiris terme, and of another opinion in Michaelmas term in the same year, and therefore (they hold) their several opinions are in respect of the said diversities of the cases.


A tenant by the cartesie made a lease for yeares, and in safety of the terme, &c. made a charter in fee simple, and made livery according to the charter (note a special mention made of livery in this case); and issue being taken

in an assise, whether the tenant by the cartesie demised in fee, upon the special matter found, it was adjudged that a fee simple pass'd, and that the heir might enter for a forfeiture, which, say they, in case of livery is an express judgement in the point agreeing with the opinion of Littleton.

[f] 43 E. 3. 33. In an action of wast against one in lands which hee held for terme of yeares, Belkinaed pleaded thus for the defendant: that the defendant was seised in fee, and infeoffed the plaintiff,

[c] 10 E. 3. 54. 43 E. 3. 36.
plaintiff, &c. and after the plaintiff demised the land back again to the defendant for yeares upon 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 plaintiff might enter, &c. and pleaded that the tarme endued, and that the day of payment was not come, and demanded judgement, if the plaintiff may maintain an action of waste, inasmuch as the defendant had now a fee simple, and shewed forth the indenture of lease with the condition (which agreeeth with Littleton's case) all being done at one time, and by one deed, and a livery intended, and with Littleton's opinion also. It is true, say they, that Cowenides accounsell with the plaintiff offered to demurre, but never proceeded. Vide 20 Ass. pl. 20.

Other authorities they cite, but these (as I take it) are the principal, and therefore for avoiding of tediousnesse, having I feare beene too long upon this point, the others I omit. Only this they add, that Littleton had seene and considered of the said books, and have set towne his opinion where livery of seisin is made upon a conveyance made at one time, as hath beene said, that he hath fee simple conditionall.

Beneigne lector, utere suo judicio, nihil enim, impedio. Conditio beneficiales qua statum consuiit beneign secundum verborum intentionem est interpretanda, odio autem qua statum destruit strictè secundum verborum proprietatem est accipienda.

A lease is made to a man and a woman for their lives upon condition, that which of them two shall first marry, that one shall have fee, they entermarry, neither of them shall have fee, for the uncertainity.

Note, if the condition be to increase an estate (that is to say) to have fee upon 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 have fee, because a precedent condition to increase an estate must be performed, and if it become impossible, no estate shall rise.

"Pur cego que le grantor ne post enterre, &c." Regularly when any man will take advantage of a condition, if hee may enter hee must enter, and when he cannot enter he must make a claim, 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 waive the condition at his pleasure.

As if a man grant an advowson to a man and to his heires upon condition, that if the grantor, &c. pay 20 pound on such a day, &c. the state of the grantee shall cease or be utterly void, (1) the grantor payeth the money, yet the state is not revested in the grantor before a claim, and that claim must be made at the church. [d] And so it is of a reversion or remainder of a rent, or common, or the like, there must be a claim before the state be revested in the grantor by force of the condition, and that claim must be made upon the land.

A fortiori, in case of a feoffment which passeth by livery of seisin, there must be a re-entry by force of the condition before the state be void.

(1) Acc. 2. And. 8.
upon Condition.

If a man bargaineth and selleth land by deed indented and enrolled with a proviso, that if the bargainer pay, &c. that then the state shall cease and be void, he payeth the money, the state is not revesed in the bargainer before a re-entry, (2) and so it is if a bargain and sale be made of a reversion, remainder, advowson, rent, common, &c. And so it is if lands bee devised to a man and to his heirs upon condition, that if the devisee pay not 20 pound at such a day, that his estate shall cease and be void, the money is not paid, the state shall not be vested in the heir before an entry. And so it is of the reversion or remainder, an advowson, rent, common, or the like. (3)

But the said rule hath divers exceptions. First, in this present case of Littleton, for that he can make no entry, he shall not be driven to make any claim to the reversion: for seeing by construction of law the freehold and inheritance passeth maintenunt out of the lessor; by the like construction, the freehold and inheritance by the default of the lessee shall be revesed in the lessor without entry or claim.

2. If I grant a rent charge in fee out of my land upon condition, there if the condition be broken, the rent shall be extinct in my land, because I (that am in possession of the land) need make no claim upon the land, and therefore the law shall adjudge the rent void without any claim.

3. If a man make a feuemento unto me in fee upon condition that I shall pay unto him 20 pound at a day, &c. before the day I let unto him the land for yeares, reserving a rent, and after faile of payment, the feuemento shall retire the land to him and to his heirs, and the rent is determined and extinct, for that the feuemento could not enter, nor need not claim upon 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 reserved.

4. If a man by his deed in consideration of fatherly love, &c. co venant to stand seised to the use of himselfe for life, and after his decease to the use 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 revocation, &c. the father doth make a revocation according to the proviso, the whole estate is maintenunt revesed in him without entry or claime for the cause aforesaid.

"Le grantee ad uncore title fur 3 ans." By this it appeareth that albeit the lessee had pro tempore a fee simple, yet after that fee simple is devested out of him, and vested in the lessor, he shall hold the lands for three yeares by the expresse limitation of the parties.

If a man make a lease for 40 yeares, the lessee afterwards taketh a lease for 20 yeares upon condition that if he doth such an act, that then the lease for 20 yeares shall be void, and after the lessee breake the condition, by force whereof the second lease is void, notwithstanding the lease for 40 yeares is surrendered, 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 reversion to the lessee upon condition, and after the condition is broken, the tearme was absolutely surrendered. And the diversitie is when the lessor grants the reversion to the lessee upon condition, and when the lessee grants or surrenders his estate to the lessor; for a condition annexed to a surrender may revest the particular estate, because

(2) [See Note 120.]

(3) [See Note 121.]
because the surrender is conditional. But when the lessee grants
the reversion to the lessee upon condition, there the condition is
 annexed to the reversion, and the surrender absolute. (1)

A gardian in chivalric took a seoffment of the infant within age
that was in his ward, and the infant brought an action, and the
gardian shall be adjudged a disessor, which proveth that the seoff-
ment as against the infant was void, and yet by acceptance thereof
the interest of the gardian was surrendered.

A man maketh a lease for tarme of life by deed, reserving the
first seven years a rose, and if the lessee will hold the land after the
seven years, to pay a rent in money; the lessee will not hold over,
but surrender his tarme: in this case in judgement of law he had
but a tarme for seven 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 have but a tarme for two yeares, if he has pay not the money
the estate for life is determined, and he shall have the land but for
two yeares.

"Ceo est bone prose adongues, que le reversion est in ley, &c." Here
is implied that no man can have an action of waste, unless the
reversion be in him, and by the authority of our author the reason
of a case, and well applied, is a good prose of law. (2)

Sect. 351.

*MES en tels cases de seoffment
sur condition, l'ou le seoffor pot
loyalement entrer par le condition en-
freint; &c. * la le seoffor n'ad le
franktement devant son entrie, &c.

BUT in such cases of seoffment
upon condition, where the seoff-
for may lawfully enter for the con-
dition broken, &c. there the seoffor
hath not the freehold before his en-
trie, &c. (3)

This upon which hath beene said is evident, and needeth no
further explanation.

Sect. 352.

ITEM, si seoffment soit fait sur
tiel condition, que le seoffee done-
ra la terre al seoffor, et a la feme del
seoffor, a ever et tenier a eux, et a les
heires de leur deux corps engendres,
et pur default de tiel issue, le remain-
der al droit heires le seoffor. En ceo
cas si le baron devoy, vivant la feme,
devant ascun estate en le tali fait a
eux, * &c. donques doit la seoffee per
la

* la—lou in L. and M. and Rob.
(1) See also Dyer 143. 2 Roll. Abr. 495.
(2) [See Note 122.]
(3) [See Note 123.]
before any estate in tail made unto them, &c. then ought the feoffor by the law to make an estate to the wife as near the condition, and also as near to the extent of the condition as he may make it, (1) that is to say, to let the land to the wife for terms of life without impeachment of waste, (2) the remainder after his decease to the heirs of the body of her husband on her begotten, (3) and for default of such issue, the remainder to the right heirs 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 tail. And if such estate had been made in the life of the husband, then after the death of the husband shee should have had an estate in tail, which estate is without impeachment of waste. And so it is reason, that as near as a man can make the estate to the intent of the condition, &c. that it should bee made, &c. albeit she cannot have estate in tail, as she might have had if the gift in tail had been made to her husband and to her in the life of her husband, &c.

"Qu. le feoffor demera, &c." Here is no time limited, therefore the feoffor by the law hath time during his life, unless he be hastened by the request of the feoffor or the heirs of his body, as Littleton saith in the next section.

"Si le baron devie, &c." But in this case, if the feoffor 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 bee made upon condition that the feoffor before the feast of St. Michael the Archangell next following give the land to the feoffor and to his wife in tail, ut supra, and before the day the feoffor

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(1) [See Note 124.]  
(2) [See Note 124.]  
(3) [See Note 126.]
feoffee dieth, the state of the heire of the feoffee shall be absolute;
because a certaine time is limited by the mutual agreement of the
parties, within which time the condition becomes impossible by
the act of God, as hath been said before, and therefore it is
necessary when a day is limited, to add to the condition, that the
feoffee or his heires doe performe the condition; but when no time
is limited, then the feoffee at his peril must performe the condition
during his life (although there be no request made) or else the feof-
for or his heires may re-enter.

"Fait a eux, &c." Here the (G. e) implyeth according to the
condition with the remainder over.

"Al feoffor a le feme, &c." Here it appeareth that albeit the
feme be a stranger, yet the feoffee is not bound to make it within
convenient time, because the feoffor who is privy to the condition
is to take joyntly with her. And so it is if the condition be to
enfeoffe the feoffor, and an estranger, the feoffee hath time
during his life, unless he be hastened by request. Otherwise it is
(as hath beene said) where the condition is to enfeoffe a stranger or
strangers only.

If a man make a feoimient in fee, upon condition that the feoffee
shall 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 aforesaid,
because the feoffor who is partie, and privy 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 convenient time, for that the stranger is not privy
to the condition, and he ought to have the profits presently, as before
hath beene said.

"De faire estate al feme cy pres le condition, et auxy cy pres
l'entent del condition que il fait faire, &c."

A infoffe B. upon condition that B. shall make an estate in frank-
mariage to C. with one such as is the daughter of the feoffor; in
this case he cannot make an estate in frunktarmage, because the
estate must move from the feoffee, and the daughter is not of his
blood, but yet he must make an estate to them for their lives, for
this is as neer the condition as he can. And so it is if the condition
be, to make to A. (which is a meer layman) an estate in frank-
moigne, yet must he make an estate to him for his life; for the reason
here yeilded by Littleton.

A diversitie is to be understood between conditions that are to
creante 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 nere 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, unless it be in certaine speciall cases: and of this
somewhat hath beene said before in this chapter.

As if a man mortgage his land to W. upon condition, that if the
morgageor and I. S. pay twenty shillings at such a day to the morg-
gagee, that then he shall re-enter, the morgageor dieth before the
day, I. S. payes the money to the morgagee, this is a good perform-
ance of the condition, and yet the letter of the condition is not per-
formed.
formed. But if the mortgagee had been alive at the day, and he would not pay the money, but refused to pay the same, and J.S. alone had tendered the money, the mortgagor might have refused it. But if a man make a lease to two for years, with a proviso, if the lessee dye during the term, the lessor shall re-enter, one lessee alien his part and dye, the other lessee cannot re-enter, but the assignee shall enjoy the term so long as the survivor liveth, and the reason is, because the lease by the proviso is not to cease till both be dead. But in the former case, albeit the mortgagor be dead, yet the act of God shall not disable J.S. to pay the money, for thereby the mortgagor receives no prejudice. And so it is in that case, if J.S. had died before the day, the mortgagor might have paid it.

And here is to be observed a diversity when the seoffee dyeeth, for then (as hath been said) the condition is broken, and when the seoffor dyeeth, for then the estate is to be made as near the intent of the condition as may be.

"Als ferme pour terme de sa vie sans impecchement de wast."

Here it appeareth, that this estate for life ought to be without imprisonment of waste, and yet if the wife doth accept of any estate for life without this clause, without imprisonment of waste, it is good, because the state for life is the substance of the grant, and the privilege to be without imprisonment of waste is collaterall, and only for the benefit of the wife, and the omission of it onely for the benefit of the heir. (1)

Also if the wife take husband before request made, and then they make request, and the state is made to the husband and [220. a.] 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 be made to the wife, but it is all one in substance, seeing that the limitation is during the life of the wife.

"Sauns impecchement de wast." Absque impetitione wasti, (that is) without any challenge or imprisonment of waste, and by force hereof the lessee may cut down the trees and convert them to his own use. Otherwise it is if the words were sauns impecchement per aecus action de wast, for then the discharge extends but to the action, and not to the trees themselves, and in that case the lessor shall have them. (1)

And it is to be observed, that after the decease of the husband the state is not to be made to the wife and the heires of her body by her late husband ingended, and so to have an estate of inheritance as she should have had by survivor, if the estate had bin made according to the condition, but only an estate for life without imprisonment of wast, &c. for that by the authoritie of Littleton is not so neere the intent of the condition as the case that Littleton puteth. But I will search no further into this case, but leave it to the learned and judicious reader.

"Et apres son decease a les heires del corps le baron de luy engendres."

Note here, admit that there were two issues in tail, the remainder shall presently vest only in the eldest, and yet if he dieth without issue, it shall per formatam doni vest in the youngest, as hath beene said in

(1) [See Note 127.]

(1) [See Note 128.]
Sect. 353.

ITEM en cest case si le baron et la femme ont issue, et devient devant le done en la taile fait a eux, &c. don-ques le feoffe 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 mesma la ley est en autres cases semblables. Et si tiel feoffe ne voet faire tiel estate, &c. quant il est raisonablement requise per eux que devoyent aver estate per force de le condition, &c. donque poer le feoffor ou ses heires enter*.

ALSO in this case if the husband and wife have issue, and die before the gift in taile made to them, &c. then the feoffee ought to make an estate to the issue, and to the heires of the body of his father an his mother begotten, and for defaul of such issue, &c. the remainder t the right heires of the husband, &c. And the same law is in other lik cases: and if such a feoffee will not take such estate, &c. when he is reasonably required by them which ought to have the state by force of the condition, &c. then may the feoffor or his heires enter.

"QUANT il est raisonablement requise per eux que devoyent aver estate per force de le condition." Note here it appeareth, that the feoffee hath time during his life to make the estate, unless he be reasonably required by them that are to take the estate. This is to be intended of parties or privies, and not of meere strangers, for there (as hath beene said) the state must be made in convenient time.

And concerning the request it is to be knowne, that when the request is made, the party or privy must request the feoffee at a time certain to be upon the land, and to make the state according to the condition, for seeing no time certain is prescribed for the making of the state, and it is uncertain when the request shall bee made, such request and notice must be made as hath bin said before in this chapter. And of this section, with the (etc.) there needeth not, upon that which hath beene said, any farther explication.

Sect. 354.

ITEM si feoffmentsoit fait sur condition, que le feoffe † re-infeoffera plusieurs homes, a aver et tener a eux.

ALSO, if a feoffment bee made upon condition, that if the feoffee shall re-enfeoffe many men, to have

* &c: added in L. and M. and Roh.
† re-infeoffera—infefoffera, L. and M. and Roh.

(3) See 1 Rep. 95: 3 Rep: 61. 1st Rep. 80, and the note page 486, in Mr. Douglas's Reports.
Vid Sect. 1.

ITEM si feoffement soit fait sur condition d'enfeoffer un autre, ou de donner en un taille a un autre, &c. si le feoffé devant le performance de la condition enfeoffa un estranger, ou fait un lease pur terme de vie, donques poët le feoffor et ses heires, entrer, &c. par cedu que il ad luy mesmo disable de performer

LSO if a feoffement be made upon condition to enfeoff another, or to make a gift in taille to another, &c. if the feoffor before the performance of the condition enfeoffe a stranger, or make a lease for life, then may the feoffor and his heirs enter, &c. because he hath disabled himselfe

(1) [See Note 129.]
(2) See the note 2, on page 12. b.
performer le condition ensunt que il ad fait estate a un auter, &c. (4) himself to perform the condition; inasmuch as he hath made a estate to another, &c.

LITTLETON having spoken of defaults of performance, or expresse breach of conditions, speaketh now in what cases the feoffee in judgement of law doth disable himself to perform the condition: and of disabilities some bee by act of the party, and some by act in law.

"On a doner en taile a un auter, &c." Here is implied an estate for life or for yeare, &c.

"Enseoffe un estranger ou fait un lease pour terme de vie." This is a disability by the act of the partie, for [221. a. herein the feoffe hath disabled himself to make the feoffment or other estate according to the condition. And to speake once for all, the feoffe is disabled when he cannot convey the land over according to the condition in the same plight, quality, and freedom as the land was conveyed to him, for so the law requireth the same, as shall manifestly appeare hereafter. And here where our author speaketh of a feoffment, he includeth an estate tail as well as the fee simple.

Sect. 356.

Enmeme le mameer est, si le feoffee, devant le condition 2forme, lessa mame le terme a un estranger pur terme des ans; en cest case le feoffee et ses heires poyent entrer, &c. par cee que le feoffee ad lug disable de faire estate de les tenements accordant a cee que estoit en les tenements, quant estate est fait fait a lug. Car s'il voile faire estate * de les tenements accordant a le condition, &c. donques poi le lessee pur terme d'ans enter et ouste mame ceeuy a que l'estate est fait, &c. et occupier cee durant son termeć.

IN the same manner it is, if the feoffee, before the condition performed, leteth the same land to a stranger for term 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 unto him.

For if he will make an estate of the tenements according to the condition, &c. then may the lessee for yeares enter and oust him to whom the estate is made, &c. and occupy this during his termere.

"Si le feoffee devant le condition 2forme lessa mame la terre a un estranger pur terme des ans, &c." Here the &c. implyeth a lease to take effect in futuro as well as in presenti, also a lease for one yeare or half a yeare, &c.

The reason of this is evidently set downe before. And again, of disabilities some bee by act in presenti, whereas Littleton hath put two examples, and some in future, whoreof now hee will speake in the next Section.

* de les tenements not in L. and M. nor Roh. † &c. added in L. and M. and Roh.

(1) Upon the doctrine of this and the three following Sections, see Vin. Abr. vol. 5. p. 221. 222.
Sect. 357.

AND many have said, that if such feoffment be made to a single man upon the same condition, and before hee hath performed the same condition he taketh wife, then the feoffor and his heires maintainent may enter, because, if he hath made an estate according to the condition, and after death, then the wife shall be endowed, and may recover 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 upon condition, for that then no such wife was disposible, nor should bee endowed by the law, &c.

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 [a] appeareth that albeit the wife by the marriage is but intitled to have dower, and the estate which she is to have 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 dissipabilitie and cause of re-entrie, for that the land is not in that freedome and plight as it was conveyed to the feoffor, and after the state made over according to the condition the land shall be charged therewith.

"En un auter plight." Plight is an old English word, and here signifies not only the estate but the habit and qualitie of the land, and extendeth to rent charges, and to a possibility of dower. Vide sect. 269, 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 un home sole." For if the feoffor were married at the time of the feoffment, then the dower can bee no dissipability, because the land shall remaine in such plught as it was at the time of the feoffment made unto him.

"Donques le feoffor et ses heires maintainent poient entrer." Here it appeareth, that seeing that for this title or possibilite the feoffor may presently enter, that albeit the wife happen to dye before the husband,

* donques—que in L. and M. and Rob. † feme not in L. and M. nor Rob.
† le—ses in L. and M. and Rob.
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 ever disabled. And herein a diversitie is to be observed betweene a disabilitie for a time on the part of the feoffee, and a disability for a time of the part of the feoffor. For if a man maketh a feoffment in fee, upon condition that the feoffee before such a day shall re-infeoffe 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 entreteth into religion, and is professed, and before the day is deraigned, yet the feoffor may re-enter.

So it is if the feoffee before the day make a feoffment in fee, and before the day take back an estate to him and his heires, yet the feoffor may re-enter.

Albeit in these cases a certaine day is limited, yet the feoffee being once disabled is ever 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 upon condition, that if the feoffor or his heires pay a certaine sum of money before such a day, the feoffor commit treason, is attainment and executed, now is there a disabilitie on the part of the feoffor, for he hath no heir; but if the heire be restored before the day he may performe the condition, as it was resolved. *Trin. 18 Eliz. in Commini Banco in Sir Thomas Wint's case.*

(Pho. 553. a. 244. C relocated. 427. Robe. 354.)

*Trin. 18 Eliz.*

*In Communi Banco in Sir Thomas Wint's case.*

Otherwise it is if such a disabilitie had growne on the part of the feoffee; and the reason of the diversitie is, 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 disability of the feoffor, or his heire; 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 day is deraigned, he may performe the condition for the cause aforesaid. *Et sic de similibus.* The (**c.*) in this Section are sufficiently explained.

**Sect. 358.**

Suppossem le maner est, si le feoffor fice charge la terre per son fait d'un rent charge devant le performance del condition, ou soit oblige en un estatude de le staple, ou statute merchant, en tielx cases le feoffor et ses heires poyent enter, &c. caus. qua suprâ. Oar quecunque que venust a les tenements per le feoffment de le feoffor, *etx* covient estre liables, et estre mis en execution per force de l'estatute merchant ou de statute del staple. *Quere.* Mes quant le feoffor

*etx—dengues les tenement, L. and M. and Rob.

*Quere—&c. L. and M. and Rob.*
feoffor or his heires, for the causes aforesaid, shal have entred, as it seems they ought, &c. then all such things which before such entry might trouble or encumber the tenements so given upon condition, &c. as to the same land, are altogether defeated.

"POYENT enter, &c." And here it is to be understood, that the grant of the rent charge is a present disability of the feoffor, and therefore albeit the grantee doth bring a writ of annuitie, and discharge the land of it, ab initio, yet the cause of entree being once given by the act of the feoffee the feoffor may re-enter. And so it is if the grant of the rent charge were made for life, and the grantee died before any day of payment, yet the feoffor may re-enter.

The like law is of any judgement given against the feoffee wherein debt or dammages are recovered.

"ou soit oblige en un statute de la staple, &c." If the feoffee be dissised, and after bind himself in a statute staple, or merchant, or in a recognizance, or take wife, this is no disabilitie in him, for that during the disseisin the land is not charged therewith, neither is the land in the hands of the disseisour liable thereunto. And in that case if the wife die, or the conusee release the statute or recognizance, and after the disseisin doth enter, there is no disabilitie at all, because the land was never charged therewith, and therefore in that case the feoffor may enter and performe the condition in the same light and freedome as it was conveyed unto him.

And it is to be observed, that Littleton putte these cases as examples, for there are some other disabilities implied, that are not here expressed.

The lord Clifford did hold his barony and the sheriffwick of Woxforland of the king by grand serjeanty in capite, and the king gave him licence that he might inoffice thereof divers chaplains in se, so that they should give the same to the lord Clifford and the heires males of his body, the remainder over, &c. the lord Clifford according to the licence inofficed the chaplains, and before they made the reconveyance the lord Clifford dyed, and it was adjudged that the heir might enter for the condition broken. For in this case the feoffees were bound by law to have made the gift in taile to the lord Clifford himselfe, albeit hee never 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 seize 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 feoffement made upon condition, which is worthy of observation.

If a man grant an advowson upon condition that the grantee shall regrant the same to the grantor in taile; in this case, if the church become voide before the regrant, or before any request made by the grantor, he may take advantage of the condition, because the advowson is not in the same plight as it was at the time of the grant upon condition. And so it was resolved, (§) Pasch. 14 Eiz. in Communi
ITEM, si un home fait un fait de feoffment a un auter, et en le fait est nul condition, &c. et quant le feoffor a luy voyele faire livery de seisin per force de mesme le fait, il fait a luy le livery de seisin sur certaine condition*; en est cas rien de les tenements passa per le fait, pur que le condition n’est comprise deins le fait, et le feoffment est en tiel force sicome nul tiel fait ust este fait.

ALSO, if a man make a deed of feoffment to another, and in the deed there is no condition, &c. and when the feoffor will make livere of seisin unto him by force of the same deed, hee makes livery of seisin unto him upon certain condition; in this case nothing of the tenements passeth by the deed, for that the condition is not comprised within the deed, and the feoffment is in like force as if no such deed had beene made.

"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 ust case fait." And the reason hereof is, for that the estate passeth by the livery of seisin (1). And in this case the feoffor upon the deliverie of seisin must expresse the state to him and his heirs, or to the heires of his body, &c.

If an agreement bee made betweene two, that the one shall en-feoofee the other upon condition in surtey of the paiment of certaine money, and after the livery is made to him and his heires generally, the state is holden by some to be upon condition, inasmuch as the intent of the parties was not changed at any time, but continued at the time of the livery (2).

If a man make a charter of feoffment in fee, and the feoffor deliver seisin for life, the feoffee shall hold it but for life; but if the livery be expressly for life, and also according to the deed, the whole fee simple shall passe, because it hath a reference to the deed.

* &c. added in L. and M. and Boh.
(1) Vid. ant. 48.  
(2) [See Note 130.]
ITEM, si feoffment soit fait sur
tel condition, que le feoffee ne ali-
nera la terre a nuluy, est condition
et voide, par ceo quant home
et enfeoffe * de terres ou tenements,
iz nul power de eux aliener a aucu
person per la ley. Car si tel condi-
tion serroit bone, donque la condition
by ousteroit de tout le power que
la ley luy dona, le quel serroit en-
center reason, & pur ceo tel condition
est voide.

ALSO, if a feoffment be made
upon this condition, that the
feoffee shall not alien the land to
any, this condition is void, because
when a man is invested 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 condition should oust him
of all the power which the law gives
him, which should be against reason,
and therefore such a condition is
void.

[223. a.] "ITEM, si feoffment soit fait, &c." And the like law
is of a devise in fee upon condition that the devisee
shall not alien (1), the condition is voide, and so it is of a grant, re-
lease, confirmation, or any other conveyance whereby a fee simple
doeth passe. For it is absurd and repugnant to reason that he, that hath
no possibility to have the land revert to him, should restrain his feeoffe
in fee simple of all his power to alien. And so it is if a man bee pos-
sessed of a lease for yeares, or of a horse, or of any other chattell real
or personal, and give or sell his whole interest or propriety therein
upon condition that the donee or vendee shall not alien the same, the
same is void, because his whole interest and proprieit is out of him,
so as he hath no possibilitie of a reverter, 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 given to him. *Iniquum est ingenium hominibus non esse liberum rerum suarum alienationem; and rerum suarum quilibet est
moderator, & arbiter. And againe, regulariter non valet factum de
re met non alienanda. But these are to be understood of conditions
annexed to the grant or sale it selfe in respect of the repugnancy,
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 advowson, or common, or any other inheritance that lyeth in
grant, and by his deed granteth the same to a man and to his heirs
upon condition that he shall not alien, this condition is voide. But
some have said that a man may grant a rent charge newly created
out of lands to a man and to his heirs upon 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 puritie of a fee simple.

A man before the statute of quia emptores terrarum might have
made a feoffment in fee, and added further, that if he or his heires did
alien without licence, that he should pay a fine, then this had been
good.

(1) See Note 231.
good. And so it is said, that when the lord might have restrained the alienation of his tenant by condition, because the lord had a possibility of reverting; and so it is in the king’s case at this day, because he may reserve a tenure to himself.

If A. be seised of Black Acre in fee, and B. infeoffeth him of White Acre upon condition that A. shall not alien Black Acre, the condition is good, for the condition is annexed to other land, andousteth 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 chattels reals or personals.

**Sect. 361.**

**MES si le condition soit tiel, que le feoffee ne alienera a un tiel, nosmant son nome, ou a ascun de ses heires, ou de issues d’un tiel, &c. ou hujusmodi, les queux conditions ne tollent tout la power d’alienation del feoffee, &c. doncque tiel condition est bone.**

**But if the condition be such, that the feoffee shall not alien to such a one, naming his name, or to any of his heires, or of the issues of such a one, &c. or the like, which conditions do not take away all power of alienation from the feoffee, &c. then such condition is good.**

If a feeoffment in fee be made upon 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 yielded by our author is worthy of observation. And in this case if the feoffe enfeoffe I. N. of entent and purpose that hee shall infeoffe I. S. some hold that this is a breach of the condition, for quando aliquid prohibet fieri, ex directo prohibet & fier oblignum.

If a feoffment bee made upon condition that the feoffee shall not alien in mortmaine, this is good, because such alienation is prohibited by law, and regularly whatsoever is prohibited by the law, may be prohibited by condition, be it malum prohibitis, or malum in se. In ancient deeds of feoffment in fee there was most commonly a clause, quod licitum sit donatori rem datam dare vel vendere cui voluerit, exceptis viris religiosis & Judaeis.

**Sect. 362.**

**ITEM, si tenements soient donées en le tait sur tiel condition, que le tenant en le tait ne ses heires † ne alienerent en fee, † ne en le tait, ne pur terme d’auter vie, forsque pur leur vives demesne, &c. tiel condition est bone. Et la cause est, pur cee que quant**

**ALSO, if lands bee given in tale upon condition, that the tenant in tale nor his heires shall not alien in fee, nor in tale, nor for termes of another’s life, but only for their owne lives, &e. such condition is good. And the reason, for that when**

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*see not in L. and M.
† &c. added in L. and M.
‡ æ—œ in L. and M.
when he maketh such alienation and discontinuance of the entale, hee
doeth 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 (1).

NOTE here, the double negative in legall construction shall
not hinder the negative, viz. sub conditione quod ipse nec
heredes sui non alienarent. And therefore the grammaticall con-
mstruction is not alwayes in judgment of law to be followed.

"Foraque jur urie demeane, &c." And yet if a man make
a gift in taile, upon condition that he shall not make a lease for his
owne life, albeit the state be lawfull, yet the condition is good, be-
cause the reversion is in the donor. As if a man make a lease for
life or years upon condition, that they shall not grant over 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 gift in taile upon condition
that he shall not make a lease for three lives or 21 yeares according
to the statute of 32 H. 8. the condition is good, for the statute doth
give 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 given to him collaterally by the act, according to
that rule of law, quilibet potest renunciare juri pro se introducto.

"Quant il suit tiel alienation et discontinuance de l'estate taile." And
therefore if a gift in taile be made upon condition, that the donee,
&c. shall not alien, this condition is good to some intents, and void
to some; for, as to all those alienations which amount to any discon-
 tinuance of the state taile (as Littleton here speakeeth;) or is against
the statute of Westminster 2, the condition is good without question.
But as to a common recoverie the condition is voyd, because this is
no discontinuance, but a barre, and this common recovery 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 ob-
served, that to this estate taile there be divers incidents. First, to be
dispatched of wast. Secondly, that the wife of the donee in taile shall
be endowd. Thirdly, that the husband of a feme domne after issue
shall be tenant by the curtesie. Fourthly, that tenant in taile may
suffer a common recoverie (1); and therefore if a man make a gift in
taile, upon condition to restraine him of any of these incidents, the
condition is repugnant and void in law. And it is to be observed,
(*) that a collateral warranty or a lineal with assets in respect of the
recompence, is not restrained by the statute of Donis conditionalibus,
no more is the common recovery in respect of the intended recompence.
And Littleton, to the intent to exclude the common recovery,
saith, tiel alienation et discontinuance, joyning them together.

If a man before the statute of Donis conditionalibus had made a
gift to a man and to the heirs of his body, upon condition, that

33 Ann. 11. 34.
Lib. 6. 40. 41.
Mildmay’s case
31 H. 6. 33.
12 H. 7. 33.
31 H. 7. 11.
Vid. Sect. 250. nec
Cron. Car. 286.
Hob. 101.
146. b. 30 Rep. 190.
4 Rep. 14. (5 Rep. 43. a
samma.)
31 H. 8. 33.
13 H. 7. 23. 24.
37 H. 8. 17. 19.
33 H. 8. Drye 45.
(5 Rep. 64.)
(7) Dier 33 H. 8.
Sb. 48. 49.
(10 Rep. 38. 90.
1 Roll. Abr. 418.)

Vid. lib. 6. 40. 41.
Sir Arch. Mild-
man’s case.
(1) Rep. 33. a
1 Roll. Abr. 418.)
(1) Roll. Abr.
415. 418.
10 Rep. 35. b)

22 E. 3. 0.
17 Eliz. 243. Drye.

(*) 13 H. 7. 26. b

<cap. 1. added in L. and M.  
(1) [See Note 132.]
(2) [See Note 133.]>
after issue he should not have power to sell, this condition should have bin repugnant and void (3).\textit{Partitions, after the statute a man makes a gift in taile, the law tacitè gives him power to suffer a common recovery; therefore to add a condition, that he shall have no power to suffer a common recoverie, is repugnant and voyd.}

If a man make a seoffment to a baron and feme in fee, upon condition, that they shall not alien, to some intent this is good, and to some intent it is void: for to restrain an alienation by seoffment, or alienation by deed, it is good, because such an alienation is tortious and voidable: but to restrain their alienation by fine is repugnant and void, because it is lawfull and unavoidable.

It is said, that if a man infeoff an infant in fee, upon condition that hee shall not alien, this is good to restrain alienages during his minorite, but not after his full age. It is likewise said, that a man by licence may give land to a bishop and his successors, or to an abbot and his successors, and add a condition to it, that they shall not without the consent of their chapter or covent, alien, because it was intended a mortmain, that is, that it should for ever continue in that see or house, for that they had it en outer droit, for religious and good uses.

"\textit{Le statute de W. 2. cap. 1."} Hereby it appeareth, that whatsoever is prohibited by the intent of any act of parliament, may be prohibited by condition, as hath beene said.

\textbf{Sect. 363.}

\textbf{Or} it is proved by the word comprised in the same statute that the will of the donor in sue cases shall be observed, and when the tenant in taille maketh such discontinuance, hee deth contrary to that, &c. And also in estates in taille of any tenements, when the reversio of the fee simple, or the remainder of the fee simple is in other persons when such discontinuance is made then the fee simple in the remainder is discontinued. And because tenant in taille shall doe no such thing against the profits of his issues, and good right, such condition is good as is aforesaid, &c.

"QUANT"

\textit{Que fuit al extent de la finansce de mesma l'estatut, added in L. and M. and Roh.}
\textit{tel—us, L. and M. and Roh.}
\textit{ou remainder en fee simple, not in L. and M. and Roh.}

\textit{On la reversio ou la fee simple, added in L. and M. and Roh.}
\textit{ou—outer in L. and M. and Roh.}
\textit{de ses issues, not in L. and M. nor Roh.}
\textit{et, not in L. and M. nor Roh.}

(2) [See Note 134.]
upon Condition.

“QUANT le reversal ou rem' on fee est en autrui persona.”
Put the case that a man make a gift in taile to A. the remainder to him and to his heires, upon condition that he shall not alien; as to the state taile the condition is good, for such alienation is prohibited, as hath been said, by the said statute. But as to the fee simple, some say it is repugnant and void, for the reason that Littleton hath yeilded: and therefore some are of opinion, that this is a good condition, and shall defeat the alienation for the estate taile only, and leave the fee simple in the alienie, for that the condition did in law extend only to the state taile, and not to the remainder.

“Encontrer le profit de ses issues.” Hereby it appeareth, that to restrain tenant in taile from alienation against the profit of his issues, is good, for that agreeeth with the will of the donor, and the intent of the statute.*

But a gift in taile may be made upon 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 statute, and seemeth to agree with the reason of Littleton, because in that case, Vetusius donatoris observatur, &c. and it must be for the profit of the issues.

Sect. 364.

I TEM home poit doner terres en taile sur tel condition, que si le tenant en le taile ou ses heires alienent en fee ou en taile, ou pur terme d'autreste, &c. et auxzy que si toute l'issues reigneants del tenant en le taile soient morts sans issue, que adonques bien lirrot al donor et a ses heires de entrer, &c. Et per tel voay le droiz de le taile pont este savox apres || discontinuance, aliuse en le taile, as uncouth y soiz; insay que per voy d'entre del donor ou de ses heires, le taile ne sera moy defeant per tel condition:

“Quere hoc. Et unicere si le tenant en le taile en ceo case, ou ses heires, font aucune discontinuance, c'estay en le reversion ou ses heires, apres ceo que le taile est determine pur default de issue, &c. payent entrer en le terre per force de mesma condition, et ne seront moy § cohet de sur breie de formdon en le reverter.

ALSO a man may give lands in taile upon such condition, that if the tenant in taile or his heires alien in fee or in taile, or for terms of another man's life, &c. and also that if all the issue comming of the tenant in taile be 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 be saved after discontinuance, to the issue in taile, if there bee any; so as by way of entry of the donor or of his heires, the taile shall not bee defeated by such condition: Quere hoc. And yet if the tenant in taile in this case, or his heires, make any discontinuance, he in the reversion or his heires, after that the taile is determined for default of issue, &c. may enter into the land by force of the same condition, and shall not be compelled to sue a writ of formedon in the reverter.

* 46 B. 2. 2. 1
(1 Rol. Abr. 414.)

1 de—en in L. and M. and Roh.
‡ test added in L. and M. and Roh.
§ issut added in L. and M. and Roh.
† Quere hoc, not in L. and M. nor Roh.
§ cohet—arte in L. and M. and Roh.
"Alienont, &C. et auxy si toutes les issues soient mortes, &C." Note, *Liti ton* purposely made parcel of the condition in the copulative, that the tenant in taille should alien, &c. For if a gift in taille be made to a man and to the heirs of his body, and if he die without heirs of his body, that then the donor and his heirs shall re-enter, this is a vvoyd condition; for when the issues fail, the estate determineth by the expresse limitation, and consequently the adding of the condition to defeate that which is determined by the limitation of the estate, is void, (1) 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 hee restrained not the alienation onely, (for then presently upon the alienation the donor, &c. might re-enter and defeat the estate taille) but added, and die without issue, to the end that the right of the estate in taille might be preserved, and not defeated by the condition, but might be recovered agayne by the issue in taille in a *form edon*.

And *Littleton* expressly saith, that the donor and his heirs after the discontinuance, and after that the estate taille 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 (*quere hoc*), this is added by some that understood not this case, and is not in the originall.

Note, that in a condition consisting of divers parts in the conjunctive, as here in the case of *Littleton*, both parts must be performed, according to the old rule, [a] *Si plures conditiones ascripte fuerunt donationi conjunctim, omnibus est parentem et ad veritatem copulativae requiritur quod utraque para sit vera*. But otherwise it is when the condition is in the disjunctive, (1) for the same author in that case saith, *Si divisione cullibet, vel alteri corum satia est obtinercus. Et in disjunctivo sufficit alteram partem case veram.* What then if the condition or limitation be both in the conjunctive and disjunctive: As if a man make a lease to the husband and wife, for the termere of one and twenty yeares, if the husband and wife or any child betweene them so long shall live, and then the wife dyeth without issue; shall the lease determine, or continue during the life of the husband? And the answer is, that it shall continue, for the disjunctive referreth to the whole, and disjoyneth not onely the latter part, as to the child, but also to the baron and fem, so as the sense is, if the baron, fem, or any child shall so long live.

[6] And so it is if an use be limited to certaine persons, untilt *A.* shall come from beyond sea, and attain unto his full age, or dye, if he doth come from beyond sea, or attaine to his full age, the use doth cease.

ITEM, homo ne poit pleder en aucun action, que estate fuit fuit a se, en se faite, ou pur terme dure, sur condition, s'il ne voucha record de ceo, ou monstra un escript south scale, provant memose la condition. Car il est un common cruaison, que homo per plee ne defeatera seu estate de franktemen per fac d'aucun tiel condition, sinon que il monstra le propre de condition en escript, Sc. sinon que ceo soient en aucuns special cases, &c. Mes de chattels rais, sitcom de leas fait aterme d'ans, a de grands de gates fait per gardins in chivalric, & huysmosi, Sc. hame poit pleder que tels leases ou gransfueront fuits sur condition, Sc. monstre aucun escript de la condition. Issint en meme le maner hame poit faire de dones & grants de chattels personals, & de contracts personals, &c.

ALSO a man cannot plead in any action, that an estate was made in fee, or in fee tayle, or for terme of life, upon condition, if he doth not vouch a record of this, or shew a writing under scale, proving the same condition. For it is a common learning, that a man by pleas shall not defeat any estate of freehold by force of any such condition, unless he sheweth the proper of the condition in writing, &c. unless it bee in some special cases, &c. But of chattels reals, as of a lease for yeares, or of grants of wards made by gardians in chivalric, and such like, &c. a man may plead that such leases or grants were made upon condition, &c. without shewing any writing of the condition. So in the same manner a man may doe of gifts and grants of chattells personals, and of contracts personals, &c.

EN aucun action.” Bee the action reall, personal, or mixt, if a condition be pleaded to defeat a freehold, it is regularly true, that a deed must bee shewed forth [a] in court (2). And the reason why the deed shall bee shewed forth to the court is, for that to every deed there be two things requisite: the one, that it be sufficient in law, and this is called the legal part, and therefore the judgment of that belongeth to the judges of the law; the other concerns matter of fact, as sealing and delivery, and this belongs to the jurors. And because every deed ought to approve itselfe, and be proved by others too; it must approve it selfe upon the shewing of it forth in court in two manners.

First, as to the composition of the words, that it bee suffi-

[225. b.] cient in law, and that the court shall adjudge.

Secondly, of ancient time if the deed appeared to bee rased or interlined in places materiall, the judges adjudged upon their view, the deed to be void (1). But of latter time the judges have left that to the jurors to try whether the raising or interlining were before the deliverie.

And

§ que added in L. and M. and Rob.

(2) Sec 2 Bulst. 259. 160. 6 Mod. 237. 2 Salk. 498. (1) [See Note 136.]

39 E. 3. 23.
4 E. 4. 25. a.
6 H. 7. 6. b.
11 H. 7. 22. b.
7 H. 6. 7.
14 H. 8. 23. b.
(1) Sid. &c.
(a) Lib. 10. fol. 72. Doctor Layfield’s case.
7 E. 3. 47.
36 E. 3. 41.
41 E. 3. 10. sect.
(And. 6. a.)
(10 Rep. 24.)

Dyer 261. b.
1 Roll. Abr.
268. Cro. Cas.
300. Dott. Fis.
260.)
(Post. 257.
3 Cen. 217.)
And there is a difference between a rent, and a re-entry; for upon a gift in tail, or a lease for life, a rent may be reserved without deed, but a condition with a re-entrie cannot bee reserved in those cases without deed.

"Excertis semel sale." Which Littleton intendeth to bee a deed under sale.

And well said Littleton, a deed under sale. For though the deed be inrolled, yet hee cannot plead the inrolment thereof, though it be of record. And though it be exemplified under the great sale, [6] yet must he shew forth the deed it selfe under sale, as Littleton here saith, and not the exemplification (2). And so when Littleton wrote, no constat, or insesximus, of the king's letters patents were available to be shewed forth in court, but the letters patents themselves under sale. For both the constat and insesximus are but exemplifications of the inrolment of the charters, or letters patents: and this appeareth by the resolution of two several [c] parliaments, one holden in the third and fourth yeares of king Edward the sixt, and the other in the thirteenth yeare of queene Elizabeth. But now by those statutes the exemplification or constat under the great sale of the inrolment of any letters patents made since the fourth day of February 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 themselves (whereof there was some doubt [d] conceived upon the said statute of E. 6.) and by all and every other person and persons claming by, from, or under them. Which statutes are generally and beneficiall, and especially the act of 13 Eliz. for that extends not only to lands, tenements, and hereditaments, but to every thing whatsoever, and ought to be favourably construed for advancement of the remedie and right of the subject (3).

The difference between a constat, insesximus, and a vidimus, you may read [e] at large in Page's 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, unless be it duely and lawfully acknowledged.

"Si non quo sit en aucum especial case, &c." Hereby is implied, that if a gardian in chivalrie in the right of the heire entret for a condition broken, hee shall pleade the state upon 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 egleit.

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, as so they might provide 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 the lord by escheat; albeit his estate be created by law, shall not plead a condition to defeat a freehold without shewing of it, because the deed doth belong unto him.

A tenant
A tenant by the curtesy shall not [g] plead 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 presumed that he had the possession of the deeds and evidences belonging to his wife.

[6] But lessees for yeares, and all others that claim by any conveyance from the party, or justify as servant by commandement, &c. must shew the deed.

[3] R. brought an ejectioe firmae against E. for ejecting him out of the manor of D. which he held for term of yeares of the demise of C. E. the defendant pleaded, that B. gave the said manor to P. and Katherine his wife in taile, who had issue E. the defendant, and after the dnones infeof C. of the manor, upon condition that he should demise the manor for yeares to R. the plaintiff, the remainder to the husband and to the wife, &c. C. did demise the land to R. the plaintiff for yeares, but kept the reversion to himselfe, wherefore Katherine after the decease of her husband entred upon the plaintiff, &c. for the condition broken, and died; after whose decease the land descended to E. the issue in taile, &c. now defendant, judgement upon action, exception was taken against this plea, because E. the defendant maintained his entry by force of a condition broken, and shewed forth no deed, and 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. (1)

In a forseque quod reddat against S. who pleaded that R. was seizd, and infeofed him in mortgage upon condition of payment of certaine money at a day, and said that R. paid the money at the day, and entred judgement of the wrt: exception was taken to this plea, for that he shewed forth no deed of the condition, and it was ruled that hee 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 rebailed to R. and thereupon the plea was adjudged good, and the writ abated.

If land be morgaged upon condition, and the morgagée letteth the lands for yeares, reserving a rent, the condition is performed, the morgagor re-enters, in an action of debt brought for the rent the lessee shall plead the condition and the re-entry without shewing forth any deed.

In an assise the tenant pleads a foecoffent of the ancestor of the plaintiff unto him, &c. the plaintiff saith that the foecoffent was upon condition, &c. and that the condition was broken, and pleads a re-entry, and that the tenant entred and took away the chest in which the deed was, and yet detaineth the same, the plaintiff shall not in this case be enforced to shew the deed.

If a woman give lands to a man and his heires by deed or without generally, she may in pleading averre the same to be causa matrimonii praelocuti, albeit she hath nothing in writing to prove the same, the reason whereof see Sect. 330.

"Mes des challets reale, sicome lease fai a volunt a terme des ame, &c. This is apparent."

(Doc. Pls. 61.) (See Pls. 23. a.)

(1) [See Note 137.]

Sect.
Of Estates

Sect. 366.

I TEM, comen que home en asseun action ne poit pleder un condition que toucha & concerna frantkenement, suns monstre reascrip de cee, come est avantditz, uncour home poit estrc aide sur tiel condition per verdict de xii. homes prise a large en assise de novel discesisin, ou en aucun auter action, l'ou les justices voicent prender * le verdict de xii. jurors a large. Sicome miltonus, que home seise de certaine terre en fee lessa mesme la terre a un auter pur terme de vie sans fuit, sur condition de render al lessor un certaine rent, & pur default de painant un re-entrie, &c. per force de quel le lessor est seise come de frantkenement, et puis le rent est aderere, per que le lessor enter en la terre, et puis le lessor arraine un assise de novel disceilis de la terre envers le lessor, le quel plead que il fiust nul tort ne nul discesisin, & sur ceo l'assise soit prise; en cest case les recognitore de l'assise poient dire et render a les justices leur verdict a large sur tout le matter, comme a dire, que le defendant fiust seise de la terre en son demesne come de fee, et isint seise, mesme la terre lessse al plaintiffe pur terme de sa vie, rendant al lessor tiel annuel rent payable a tiel feast, &c. sur tiel condition, que si le rent fiust aderer a ascun tiel feast † a que doit este pay, donques bien larroit al lessor d'entrer, &c. per force de quel lesse le plaintiffe fiust seise in seu demesne come de frantkenement, et que puis apres le rent fiust aderere a tiel feast, ‡ &c. per que le lessor entra en le terre sur le possession le lessee, et pricoit le discretion de les justices, si ceo soit un disceisin fiuit a plaintiffe ou nemy; || donque per ceo que appiert a les justices, que ceo fiust nul disceisin fiuit al plaintiffe,

* le—per in L. and M. and Roh.
† a not in L. and M. nor Roh.
‡ An added L. and M. and Roh.
† Et added in L. and M. and Roh.
plaintiff, entant que l'entrée de le lessour fuit congeable sur leu; les justices doyent donner jugement que le plaintiff ne prendra rien per son breif d'assise. Et isisent en tiel cas le lessor serra aide, et unicore nul escription unques fuit fait del condition. Car cibien que les jurors poient aver conusance de le 1/2 lease, auxy bien ils poient aver conusance de le condition que fuit declare & rehearse sur le les.

For as well as the jurors may have conusance of the lease, they also as well may have conusance of the condition which was declared and rehearse upon the lease.

"VERDIT, or verdict de 12 homnes." (2) Veredictum, quasi questionis veritatis, et judizium est quasi juris dictum. Et si cut ad questionem juris, non respondunt juratores sed judices: sic ad questionem facti non respondunt judices sed juratores. For jurors are to try the fact, and the judges ought to judge according to the law that riseth upon the fact, for ex facto jus oritur.

"Prie a large." There be two kindes of verdicts; viz. one generall, and another at large or especiall. As in an assise of novel disseisin, brought by A. against B. the plaintiff makes his plaint, Quod B. disseisivit eum de 20 acres terra cum pertinentiis; the tenant pleads, Quod ipsa nullam injuriam seu disseisinam præfata A. inde secit, &c. The recognizers of the assise doe finde, Quod predict. A. injustis: sine judicio disseisivit predict. B. de predict. 20 acres terra cum pertinentiis &c. This is a general verdict. The like law it is if they finde it negatively. And Littleton here putth 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 leave the judgement of law thereupon to the court, of which kind of verdict it is said, [1] Omnii conclusio boni & veri judicis sequitur ex bonis & veris praemissis et dictis juratores.

And though Littleton here puts his case of a verdict at large upon a generall issue (which in the case hee puts, it was necessary for the tenant to pleade) yet when issue is joyned upon some speciall point, the jury, as shall be said hereafter in this section, may finde the speciall matter if it be doublefull in law, for as much doubt may arise upon one point upon the speciall issue as upon the generall issue. And as a speciall verdict may be found in Common Pleas, so may it also bee found In Pleas for the Crowne, or criminal causes that concerne life or member.

A verdict

A verdict finding matter incertainly or ambiguously is insufficient, and no judgement shall be given thereupon; as if an executor plead *pleinment administrare*, and issue is joined thereupon, and the jury finde that the defendant have goods within his hands to be administrist, but finde not to what value, this is incertaine, and therefore insufficient.

A verdict that finds part of the issue, and finding nothing for the residue, this is insufficient for the whole, because they have not tried the whole issue wherewith they are charged. As if an information of intrusion bee brought against one for intruding into a messuage, and 100 acres of land, upon the general 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 adjudged. 

[<m>But if the jury give a verdict of the whole issue, and of more, &c. that which is more is surplusage, and shall not [<a>] stay judgement; for *Utile per inutile non vitiatur*, but necessary incidents required by law the jury may finde.</m>]

If the matter and substance of the issue bee found, it is sufficient, as *Littleton* himselfe sayeth hereafter.

Estoppells which bind the interest of the land, as the taking of a lease of a man’s owne land by deed indented, and the like, being specially found by the jure, the court ought to judge according to the speciall matter; for albeit estoppels regularly must be pleaded and relied upon by an apt conclusion, and the jury is sworne ad *veritatem dicendum*, yet when they finde *veritatem facti*, they pursue well their oath, and the court ought to adjudge according to law.

[<b>So may the jure find a warrantie being given in evidence, though it be not pleaded, because it bindeth the right, unless it be in a writ of right, when the misde is joyned upon the meere right.</b>]

[<c>After the verdict recorded, the jury cannot vary it, but before it be recorded they may vary from the first offer of their verdict, and that verdict which is recorded shall stand: also they may vary from a priye verdict.

An issue found by verdict shall always be intended true untill it be reversed by attaint, and thereupon the attaint no *supererogatio* is grantable by law.

If the jure after their evidence given unto 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 avoid the verdict: but if before they be agreed on their verdict, they eate or drinke at the charge of the plaintiff, if the verdict be given for him, it shall avoid the verdict: but if it be given for the defendant, it
upon Condition.

it shall not avoid it, & sic à converso. [d] But if after they be agreed on their verdict they eat or drinke at the charge of him for whom they doe passe, it shall not avoid the verdict.

[c] If the plaintiff after evidence given, and the jury departed from the barre, or any for him, doe deliver any letter for the plaintiff to any of the jury concerning the matter in issue, or any evidence, or any escrowle touching the matter in issue, which was not given in evidence, it shall avoid the verdict, if it be found for the plaintiff, but not if it be found for the defendant, & sic à converso. But if the jury carry away any writing unsealed, which was given in evidence in open court, this shall not avoid their verdict, albeit they should not have carried it with them.

By the law of England a jury, after their evidence given upon the issue, ought to be kept together in some convenient place, without meat or drinke, fire or candle, which some bookes [f] call an imprisonment, and without speech with any, unless he be the bailiffe, and with him only if they be agreed. After they be agreed they may in causes between party and party give a verdict, and if the court be risen, give a privy 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 affirm or alter their privy verdict, and that which is given in court shall stand. But in criminal cases of life or member, the jury can give no privy verdict, but they must give it openly in court. And hereby appeareth another division of verdicts, viz. a publique verdict openly given in court, and a privy verdict given out of the court before any of the judges, as is aforesaid.

A jury sworn and charged in case of life or member, cannot be discharged by the court or any other, but they ought to give a verdict. And the king cannot be nonsuit, for he is in judgement of law ever present in court: but a common person may be nonsuit.

"En assise de novel disseisin, ou en aucun auter action, &c." Here it is to bee observed, that a speciall verdict, or at large, may be given in any action, and upon any issue, be the issue generall or speciall: and albeit there be some contrary opinions in our bookes, yet the law is now settled in this point.

"Per quic le lessor entra." Here it appeareth that the condition is executed by re-entry, and yet the lessor after his re-entry shall not, by the opinion of Littleton, plead the condition without shewing the deed, because he was partie and privie to the condition, for the parties must shew forth the deed, unless it be by the act and wrong of his adversary, as hath beene said; [m] but an estranger which is not privie to the condition, nor claimeth under the same, as in the cases above saide appeareth, shall not after the condition is executed in pleading be infinced to shew forth the deed: and by this diversitie all the bookes and authorities in law which seeme to be at variance are reconciled. See also for this matter the section next following.

"Les recognitores del assise poient dire, &c." Here it appeareth that the jurors may finde the fact, albeit the deed be not shewed in evidence,
E\[228\]n the same manner it is of a sfeo\[228\]mmement en fee, ou done en le tai\[228\]le, sur condition, coment que nul escri\[228\]ature unque fut fait de ceo *. Et si\[228\]come est dit de verdi\[228\]ct a large en assise, &c. en memme le manner est en bri\[228\]e d'entre foundue sur disesisein; et en toute autres actions ou les justices voy\[228\]lent prender le verdict a large, y \[228\]t la ou tiel verdict a large est fait, la manner del entrie entiere est mis en l'issue, &c.

AND it is to be observed, that the court cannot refuse a special verdict, if it bee pertinent to the matter put in issue. See the section next preceding.

* &c. L. and M. and Rob.
† par la ou tiel verdict a large fait la nature de matter mys en l'issue, L. and M. and Rob.
upon Condition. Sect. 368, 369.

verdict, (which is all one,) whereof Littleton here speaketh; and a general verdict that is generally found according to the issue, as if the issue be not guilty, to finde the partie guiltie or not guiltie generally, & sic de ceteris. There is also a verdict given in open court, and a privy verdict given out of court before any of the judges of the court, so called because it ought to bee kept secret and privie from each of the parties, before it be affirmed in court.

Sect. 368.

ITEM en tiel case l'on l'enqueste poit dire lour verdic a large, s'ils voient prendre sur eux la consensum de la ley sur le matter, ils poient dire leur verdic generalmente, come est mis en lour charge; come en le case examindt ils poient bien dire, que le lesseur ne discons pas le lessee, s'ils voient, &c.

ALTHOUGH the jurie if they will take upon them (as Littleton here saith) the knowledge of the law, may give a general 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.

(2 Rep. 64.)

A LSO in such case where the enquest may give their verdict at large, if they will take upon them the knowledge of the law upon the matter, they may give 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.

(4 Rep. 53.)

Sect. 369.

ITEM en mesure le case, si le case fait tiel, que apres cee, que le lessor avoit enter pur default de payment, &c. que le lessee usit enter sur le lessor, et hy discesist, en cest case si le lessor arraigne un assise envers le lessee, le lessee hy puit barre de l'assise; car il poit plèder envers luy en bar, coment le lessor que est plaintiff fust un lease al defendant pur terme de sa vie, savant le recension al plaintiffe, quiest bone plea en barre, entant que il conust le recension estre al plaintiffe. * En cest case le plaintiffe n'ad † ascun matter de luy ayder, forsque le condition fust sur le lease, et cee il ne poit plèder, pur cee que il n'ad ascun escripture de cee:

* added in L. and M. and Roh.

† ascun not in L. and M. nor Roh.
this he cannot plead, because He hath not any writing of this; and inasmuch as he cannot answer the bar, he shall be barred. And so in this case you may see that a man is dispossessed, & yet he shall not have assise. And yet if the lessee be pl. and the lessor def. he shall bar the lessee by verdict of the assise, &c. But in this case where the lessee is def. if he will not plead the said plea in bar, but plead null tort, null dissi. then the lessor shall recover by assise, causâ quâ suprâ.

"PUR ceo que il n'ad aucun escriture de ceo." Hereby it also appeareth, that albeit the condition was executed by rentrie, yet the lessor cannot plead it without shewing of a deed. But of this matter sufficient hath beene said before in the two next preceding sections.

"Quel est bone plea en barre." In a case where there have beene some varietie of opinions in our books, _Littleton_ here cleereth the doubt, and that upon a good ground. For hee himselfe reporteth in our bookes, that it was holden by all the justices of England, that a lease for life, the reversion to the plaintiff, was a good barre in an assise, and also that a lease for yeares, the reversion to the plaintiff, might bee pleaded in an assise: and so of a feoffment in fee with warranty. And herein the diversitie of pleading is to be observed; for in the case here put by _Littleton_ of a lease for life, the tenant shall pleade it in barre; but in a case of a lease for yeares, or an estate of tenant by statute or elegit, the defend- ant shall not plead in bar, as to say, assisa non, &c. but justi- fie by force of the lease, &c. and conclude, & isint sans tort. And if the tenant of the freehold be not named, he shall pleade null tenant de franktenement nomme en le briefe: and in the case of the feoffment with warranty he must relie upon the warranty.

Sect. 370.

**ITEM** pur ceo que tielx condi- tions sont plus communement mis & especifices en faits endentes, aucun pet- tit chose serra icy dit (a loy, mon fils) de endenture, et de fait pol concer- nants conditions. Et est ascovair, que si l'endenture soit bipartite, ou triparti- tite, ou quadripartite, toute les partes de

(1) [See Note 138.]
(2) [See Note 139.]
The indentures are called by several names, as
scriptum indentatum, carta indentata, scriptura indentata,
indentata, littera indentata. An indenture is a writing containing a
conveyance, bargain, contract, covenants, or agreements between
two or more, and is indented in the top or side answerable to an-
other that likewise comprehendeth the self same matter, and is
called an indenture, for that it is so indented, and is called in Greek

If a deed beginneth, hoc indenture, &c. and in troth the parch-
ment or paper is not indented, this is no indenture, because words
cannot make it indented. But if the deed be actually indented, and
there be no words of indenture in the deed, yet it is an indenture in
law; for it may be an indenture without words, but not by words
without indenting.

"Ex fata indent." And here it is to be understood, that it
ought to be in parchment or in paper. For if a writing be made
upon a piece of wood, or upon a piece of linen, or in the bark of
a tree, or on a stone, or the like, &c. and the same be sealed or de-
ivered, yet is it no deed, for a deed must be written either in
parchment or paper, as before is said, for the writing upon these is
least subject to alteration or corruption.

"Si l'indenture soit bipartite, ou tripartite, ou quattripartite,
&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, quinquipartite, &c.

"Et de fait poll." A deed poll is that which is plain without
any indenting, so called because it is cut even, or polled. Every
deed that is pleaded shall be intended to be a deed poll, unless it be
alleged to be indented.

"Toutes les partes del indenture ne sont que un en ley." If a man
by deed indented make a gift in taile, 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.

"Et chacun part del indenture est de auxy grande force, &c." This is manifest of it selfe, and is proved by the booke aforesaid.

It is to be observed, that if the feoffor, donor, or lessor seal the
part of the indenture belonging to the feoffee, &c. the indenture is
good, albeit the feoffee never sealeth the counterpart belonging to
the feoffor, &c.

(3) [See Notes 140.]
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 premier person. Le feasance en le tierce person est come en tel forme.


Tiel indenture est appel indenture fait en le tierce person, pur cec que les verbes, &c. sont en la tierce person. Et tel forme d'indentures est de plus sure feasance, pur cec que est plus communement use, &c.

ET le feasance del indenture est en deux maners, &c." Here is another of our author's perfect divisions. In this and the next section following Littleton doth illustrate his meaning, by setting downe forms and examples which do effectually teach.

In these two forms there are to be observed (amongst other) three generall parts of the same, viz. the premises, the habendum, and the in cujus rei testimonium. But hereof hath beene spoken at large, Sect. 1. 4. & 40; for Littleton speakeith not here of the delverie, but onely of the context or words of the deed.

"Pur cec que est le plus communement use." Here it appeareth that which is most commonly used in conveyances is the surest way. A communi observantium non est recedendum, &c. minimè mutanda sunt quæ certam habuerunt interpretationem. Magister rerum usu. It is provided by the statute of 38 E. 3. cap. 4. that all penal bonds in the third

* &c. not in L. and M. nor Rob.
† &c. not in L. and M. nor Rob.
third person be void and holden for none, wherein some of our bookes [d'] seem to differ, but they being rightly under- stood, there is no difference at all. For the statute is to be intend- ed 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 justice Hankford, in 2 H. 4. in which courts bonds were taken in the third person, so as such bonds made out of the realm are void; but other bonds in the third person are resolved to be good, as weil as indentures in the third person, by the opinion of the whole court in 8 E. 4. (1)

**Sect. 372.**

_The making of an indenture in the first person is as in this forme. To all Christian people to whom these presents indented shall come, A. of B. sends greeting in our Lord God everlasting. Know ye mee to have given, granted, and by this my present deed indented confirmed to C. of D. such land, &c. Or thus:_

Know all men present and to come, that I A. of B. have given, granted, and by this my present deed indented confirmed to C. of D. such land, &c.

To have and to hold, &c. upon condition following, &c. In witness whereof, aswell I the said A. of B. as the aforesaid C. of D. to these indentures have interchangeably put our seales. Or thus: In witness whereof I the aforesaid A. to the one part of this indenture have put my seale, and to the other part of the same indenture the said C. of D. hath put his seale, &c.

HERE Littleton sets down three forms of deeds indented in the first person, brevis via per exempla, longa per praecpta. It is requisite for every student to get presidents and approved forme not onely of deeds according to the example of Littleton, but of fines, and other conveyances, and assurances, and specially of good and perfect pleading, and of the right entries, and forms of judgements, which will stand him in great stead, both while he studies, and after when he shall give counsell. It is a safe thing to follow approved presidents, for nihil simul inventum est, & perfectum.
Sect. 373.

AND it seemeth that such indenture which is made in the first person, is as good in law, as [230. b.] the indenture made in the third person, when both parties have put to this their scales; 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 scale, 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 scale 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.

Sect. 374.

ALSO if an estate be made by indenture to one for term of life, the remainder to another in fee upon a certain condition, &c. and if the tenant for life have put his scale to the part of the indenture, and after dieth, and he in the remainder entreath into the land by force of his remainder, &c. in this case he is tied to
conditions comprise on l'indenture, siccome le tenant a terme de vie doit faire en sa vie, et encore estray en le remainder ne unques en seale aucun part del indenture. Mes la cause est, que entant que il enter et agreea d'aver les terres per force del indenture, il est tenus de performer les conditions deins meme l'indenture, s'il esle aver la terre, &c.

"SUR certaine condition, &c." Here by this (&c.) is implied, that the condition in this case doth extend both to the estate for life, and to the remainder, but by special limitation it may extend to any one of them, and not to the other. And albeit he in the remainder be no party to the indenture (the parties thereunto only being the lessor and the tenant for life) yet when hee in the remainder entred and agreeeth to have the lands by force of the (1) indenture, he is bound to performe the conditions contained in the indenture. And here is also a diversitie to be understood, that any estranger to the indenture may take by way of remainder, but hee cannot in this case take any present estate in possession, because he is an estranger to the deed. (1).

If A. by deed indented between him and B. letteth lands to B. for life, the remainder to C. In fee, reserving a rent, tenant for life dieth, he in the remainder entred into the lands, he shall be bound to pay the rent, for the cause and reason before yeilded by Littleton. An indenture of lease is engrossed 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 delivereth the indenture to D. and D. sealeth the counterpane to A. but R. did not scale and deliver it. And by the same indenture it is mentioned, that D. and R. did grant to be bound to the plaintiff 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. onely, and shewed forth the indenture. The defendant pleaded, that it is proved 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, judgment of the writ. The plaintiff replied, that R. did never scale and deliver the indenture, and so his writ was good against D. sole. And there the counsel of the plaintiff tooke a diversitie betweene a rent reserved which is parcell of the lease, and the land charged therewith, and a summe in grosse, as here the twenty 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 collateral to the lease, and not annexed to the land, and growth due onely by the deed, and therefore R. said hee was not chargeable therewith, for that he had not sealed and delivered the deed. But inasmuch as hee 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 adjudged that the writ did abate.

"Aver"
Lib. 3. Cap. 5. Of Estates Sect. 375.

"Auer la terre, &c." Here is implied an ancient maxime of the law, viz. Quis sentit commodum sentire debet et onus, et transit terra cum onere.

Sect. 375.

I T E M si feoffment soit fait per fait poll sur condition, et pur cec que le condition n'est pas performe le feoffor entra et happa la possession de le fait poll, si le feoffee port un action de cel entrie envers le feoffor, il ad este question si le feoffor poi pletter la condition per le dit fait poll encounter le feoffee. Et aucuns sayt que non, entant que il semble a cecque un fait poll, et le proprietie de mesme le fait appertient a cely a que le fait est fait, et nemy a cely que fist le fait. Et entant que tiel fait ne attient al feoffor, il semble a cecque que il ne poit pas cee pletter. Et autiers our dit le contrario, eont monstre divers causes. Un est, si le case fait tiel, quor en action perenter cee que le feoffee pletter mesme le fait, et monstre est al court, en est cas entant que le fait est en court, le feoffor poi monstre al court comoent en le fait son divers conditions d'estre performes de le part le feoffee, &c. et pur cec que ils ne fuient performes, il enter, &c. et a cee il sera recieve. Per mesme le reason quant le feoffor ad le fait en poigne, et cee monstre a le court, il sera & bien recieve de cee pletter, &c. et noement quant le feoffor est privic al fait, car covient estre privie al fait quant il fist le fait, &c.

ALSO if a feoffment bee made by deed poll upon condition, and for that the condition is not performed the feoffor entreteth 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 have said hee cannot,[231. b.] inasmuch as it seems unto them that a deed poll, and the propertie 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 unto them that he cannot plead it. And others have said the contrary, and have shewed divers reasons. One is, If the case were such, that in an action betwene them, if the feoffee pleade the same deed, and shew it to the court, in this case in-somuch as the deed is in court, the feoffor may shew to the court how in the deed there are divers 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 received. By the same reason when the feoffor hath the deed in hand, and shew this to the court, he shall well be received to pleade it, &c. and namely when the feoffor is privy to the fait, for hee must be privie to the deed when he makes the deed, &c.

H ERE the latter opinion is cleere law at this day, and is Little-ton’s owne opinion [s], as before hath bee observed.

* &c. added in L. and M. and Roh.
† &c. added in L. and M.
‡ cee. &c. added in L. and M. and Roh.
§ est not in L. and M. nor Roh.
¶ de le part le feoffee, &c. et pur cec que ils ne fuient performes, not in L. and M. nor Roh.
∥ de cee added in L. and M.
¶§ added in L. and M. and Roh.
upon Condition.

Sect. 376.

"Ost monstre diversa causas."

Felix qui potuit rerum cognoscere causas. Et ratio melior semper prevaleat.

"Entant que le fait est en court, &c." And herewith doe 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; quia lex non cogit ad impossibilita.


"De part le feoffor, &c." Here also is implied if the condition be to be performed on the part of the feoffor or by a stranger; and it is to be understood that when a deed is shewed forth to the court, the deed shall remaine in court all that tarm in the custody of the custos brevium, but at the end of the tearme (if the deed be not denied) then the law adjudgeth the deed in the custody of the party to whom it belongeth, for a man's evidences are as it were the sinewes of his land. But if the deed be denied, then the deed in judgment of law remaineth in court until the plea be determined (1). The residue of this section needeth no explication.

[232. a.]

Sect. 376.

Aluxy si deux homes font un trespass a un auter, le quel release a un d'eux per son fait tous actions personals, & nient obstant il suist action de trespass envers l'auter, le defendant bien poit monstrer que le trespass fait fait per luy, et per un auter son companion, et que le plaintifie per son fait queil monstrer avant released a son companion tous actions personals judgment si action. &c. et incorre tief fait appertient a son companion, & nuy a luy. Mes pur cee que il poit avoir advantage per le fait, si voit monstrer le fait al court, il poit † cee bien pleder, &c. Per mesme le rea son † poit le feoffor en l'auter cas, quant † il doit avoir advantage per le condition † compris deins le fait poll ‡.

† poit le feoffor not in L. and M. nor Rob.
‡ le feoffor, L. and M. and Rob.
§ le feoffor, L. and M. and Rob.
† compris not in L. and M. nor Rob.
§ &c. added L. and M. and Rob.

(1) [See Note 143.]

"Si deux homes font un trespasse a son auteur, &c." Hereby this section it is to bee understood, that when divers doe a trespass, the same is joynet or severall at the wil of him to whom the wrong is done, yet if he release to one of them, all are discharged, because his own deed shall be taken most strongly against himselfe, but otherwise it is in case of appeale of death, &c. As if two men bee joynetly and severally bounden in an obligation, if the oblige re-release to one of them, both are discharged; and seeing the trespassers are parties and privies in wrong, the one shall not plead a release to the other without shewing of it forth, albeit the deedde appertaine to the other. (1)

If an action of debt upon an obligation bee brought against an heir, he may pleade in barre a release made by the oblige to the executors. But albeit the deed belong to another, yet must he shew it forth, for both of them are privile to the testator.

"Per meane le reason." Ubi cadem ratio, ibidem jus

Sect. 377.

AUXY si le feoffee donast ou grantast le fait poll at feaffor, tel grant serra bone, et donques le fait & le proprietie del fait appertient al feaffor, &c. Et quant le feffor ad le fait en poigne, et * est plead at court, il serra plus tost entendue, que il vient al fait per loyal meane, que per tortious meane. Et issint a eux semble que le feffor poet bien pletter tel fait poll que comprtent condition, &c. s'il ad le fait en poigne.† Ideo semper-quære de dubulis, quia per rationes pervenitur ad legitimam rationem, &c.

(1 Rep. 14)

(232. b.)

ALS0 if the feoffee granteth the deed to the feffor, such grant shall bee good, and then the deed and the proprietie thereof belongeth to the feffor, &c. And when the feffor 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, then by a wroghtfull mean. And so it seemeth unto them, that the feffor may wel plead such deed poll which compriseth the condition, &c. if he hath the same in hand. Ideo semper quære de dubulis, quia per rationes pervenitur ad legitimam rationem, &c.

"Le proprietie del fait appertient al feffor." Hereby it appeareth that a man may give or grant his deed to another, and such a grant by paroll is good. And it is also implied, that if a man hath an obligation, though he cannot grant the thing in action, yet he may give or grant the deed, viz. the parchment and waxe to another, who may cancell and use the same at his pleasure. (1)

† &c. added L. and M. and Rob.

[232. b.]

(1) [See Note 144.]

(2) [See Note 145.]

(3) [See Note 147.]

Serra

esse—esse, L. and M. and Rob.
Upon Condition.

"Serra plusia, taut extend", que il viert al fait per loyall meane, que per tortious meane." Omnia presumuntur legitiimae factae, donec probetur in contrarium. Injuria non presumitur.

"Quere de dubius." There be three kinds of unhappy men.
1. Qui scit & non docet, Hee that hath knowledge and teacheth not.
2. Qui docet & non vivit, He that teacheth, and liveth not thereafter.
3. Qui nescit, & non interrogat, He that knoweth not, and doth not enquire to understand. Therefore Littleton saith, Quere de dubius.

Infelix cujus nulla sapientia prodest.
Infelix qui recta docet, cum vivit iniquae.
Infelix qui pauca sapit aepernitque doceri.

"Quis per rationes percomitetur ad legitimam rationem." For Ratio est radius divini luminis. And by reasoning and debating of grave learned men the darkness of ignorance is expelled, and by the light of legal reason the right is discerned, and thereupon judgment given according to law, which is the perfection of reason. This is of Littleton here called legiisima ratio, whereunto no man can attain but by long study, often conference, long experience, and continual observation.

Certaine it is, that in matters of difficultie the more seriously they are debated and argued, the more truly they are resolved, and thereby new inventions justly avoided.

Inter cuncta leges, & percunctabere doctos.

Sect. 378.

ESTATES que homines ont sur condition en ley, sont tiels estates que ont un condition per la ley a eux annex, comment que ne soit specifie en script. Si come home grant per son fait a un auter l'office de parkership de un park a auter, et occupier mesme l'office per terme de son vie, l'estate que il ad en l'office est sur condition en ley, c'estascavoir, que le parker bien et loyalmente gardera le park, et ferra eco que a tiel office appartient a faire, ou auertment bien birroit al grandeur a ses heires de luy ouste, et de granter eco a un auter s'il voit, &c. Et tiel condition que est entendu pour la ley entre annexex a aucune chose, est auxy

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ESTATES which men have upon condition in law, are such estates which have a condition by the law to them annexed, albeit that it be not specified in writing. As if a man grant by his deed to another the office of parkership of a park, to have and occupy the same office for term of his life, the estate which he hath in the office is upon 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 shall be lawful to the granter and his heires to ouste him, and to grant it to another if he will, &c. And such
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such condition as it intended by the law to be annexed to any thing, is as strong as if the condition were put in writing.

"CONDITION en ley, &c." Littleton having spoken of conditions in deed, now according to his owne division commeth to speake of conditions in law.

"Que ne soit specific en escript." A condition in law is that which the law intendeth or implyeth without express words in the deed.

"Que le parkeuer bien et loyalment gardera le 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 word parquer, to imparke, to inclose. It is called in Domesday, Parcus. In law it signifieth a great quantity of ground inclosed, priviledged for wild beasts of chase by prescription, or by the king's grant.

The beasts of parke, or chase, properly extend to the bucke, the doe, the foxe, the marten, the roe, but in a common and legal sense, to all the beasts of the forrest. There be both beasts and fowles of the warren. Beasts, as hares, conies, and roes called in records [d] Capreoli. Fowles of two sorts, viz. Terrestres and Aquatiles. Terrestres of two sorts, Silvestres and Campestres : Campestres, as partridge, quail, raile, &c. Silvestres, as pheasant, woodcock, &c. Aquatiles, as mallard, herne, &c. whereof I have seen this record [e] : Rex concessit Johanni de Beverly Armigeru suo quod ipsae cum quibuscunque cantibus suis ad quasquecam bestias feras regis in quibuscunque forestis, iacere suis quotienscumque voluerit venari possit, est quosquecunque falcones possit permittere volare ad quasquecunque aves de warrnæ in quibuscunque riparis, &c.

It is resolved [c] by the justices and the king's counsell, that capreoli, id est roes, non sunt bestia de foresta, et quid fugant alias feras. Beasts of forrests be properly hurt, hind, bucke, hare, beare, and Wolfe, but legally all wild beasts of venery.

A forest and chase are not, but a parke must be inclosed. The forest and chase doe differ in offices and lawes: every forest is a chase, but every chase is not a forest. A subject may have a forest by especial grant of the king, as the duke of Lancaster and abbott of Whitby had.

Ockam caput quid regis foresta, saith, Foresta est tuta serarum mansie non quasumlibet, sed silvestrium, non quibuslibet in locis, sed certis, et ad hoc idoneis; unde foresta E. mutata in O. quasi foresta, hoc est, serarum statia.

Pudzeld or Woodgeld is to be free from payment of money for taking of wood in any forest. But let us 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 park, but this example must be understood with a distinction: for if the parker doth not attend on the parke one or two, &c. days, this is no forfeiture of the office of pakership; but if in his default any deere be killed, and so a damage to the lord, that is a forfeiture: for (that it may be said once

* cu manifest added in L. and M. and Roh.
once for all) non-user of itselfe without some speciall damage is no forfeiture of private offices, but non-user of publique offices which concern the administration of justice, or the common wealth, is of it self a cause of forfeiture.

"Lay ouster s’il veit, Gr." Littleton here speake eth of an ouster by force of a condition in law, therefore it is to be seen in what other cases the grantor may lawfully oust his officer. (1)

There is a diversitie betweene offices that have no other profit but a collaterall certaine fee, for there the grantor may discharge him of his service, as to be a bayly, receiver, surveyor, auditor, or the like, the exercise whereof is but labour and charge to him, but hee must have his fee: for the maine rule of law is, that no man can frustrate or derogate from his owne grant to the prejudice of the grantee. And where albeit the grantee hath no other profit but his fee, yet that fee is to be perceived and taken out of the profits appertaining to the lord within his office, for there the grantor cannot discharge him of his service or attendance, for that may turn to the prejudice 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 diversitie where the grantee, besides his certaine fee, hath profits and avails by reason of his office; there the grantor cannot discharge him of his service or attendance, for that should be to the prejudice of the grantee. Also if a man doth grant to another the office of the stewardship of his courts of his manors with a certain fee, the grantor cannot discharge him of his service and attendance, because he hath other profits and fees belonging 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 onely his fee certaine, but profits and avails also, in respect of his office, as deere skynnes, shoulders, &c. But now let us 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 general.

And it is to be understood, that if any keeper kill any deere without warrant, or fell or cut any trees, woods, or underwoods, and convert them to his owne use, it is a forfeiture of his office, for the destruction of vert is, by a meane, destruction of venison. So it is if he pull downe 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 is, quia in quo quis deinguit in eo de jure est funtundus.

As to conditions in law, you shall understand they be 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 upon skill and confidence, the other without skill or confidence: upon skill and confidence, as here the office of parkership, and other offices in the next Section mentioned, and the like.

Touching conditions in law without skill, &c. some be by the common law, and some by the statute. By the common law as to every estate of tenant by the courteous, tenant in tayle after possibility of issue extinct, tenant in dower, tenant for life, tenant for years.

(1) [See Note 146.]
years, tenant by statute merchant or staple, tenant by elegit, gardian, &c. there is a condition in law secretly annexed to their estates, that if they alien in fee, (1) &c. that he in the reversal or remainder may enter, et sic de similitibus, or if they claim a greater estate in court of record, and the like.

Concerning conditions in law founded upon statutes, for some of them an entrie is given, and for some other a recovery by action: where an entrie is given, as upon an alienation in mortmain, &c. and the like: where an action is given, as for waste against tenant for life and yeares, and the like.

"Et sicut condition que est entendu per la ley entre annexe a escus chose, est auxi fort, &c." Here it is worthy the observation to take a view of the divisions aforesaid in some particular case. As for example. Admit that an office of parkership bee granted or descended to an infant or feme covert, if the conditions in law annexed to this office which require skill and confidence be not observed and fulfilled, the office is lost for ever, because, as Littleton saith here, it is as strong as an expresse condition. But if a lease for life be made to a fem covert, 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 given by statute, which giveth an entrie only. As if an infant or feme covert with her husband aliens by charter of feoffment in mortmain, this is no barre to the infant, or feme covert. But if a recovery be had against an infant or fem covert in an action of waste, there they are bound and barred for ever.

And it is to be observed, that a condition in law by force of a statute which giveth a recovery, is in some cases more strong than a condition in law without a recovery. For if lessee for life make a lease for yeares, and after enter into the land, and make waste, and the lessor recover in an action of waste, he shall avoid the lease made before the waste done. But if the lessee for life make a lease for years, and after enter upon him, and make a feoffment in fee, this forfeiture shall not avoid the lease for yeares. Nor in any of the said cases a precedent rent granted out of the land shall be avoydeth. For if lessee for life grant a rent charge, and after doth waste, and the lessor recovereth in an action of wast, [234 a.] he shall hold the land charged during the life of the tenant for life, but if the rent were granted after the waste done, the lessor shall avoid it.

And the reason wherefore the lease for years in the case aforesaid shall be avoydeth, 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 be barred to recover locum vastatum, which the statute giveth. (1)

(1) [See Note 147]

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 avoydeth during his life, for regularly a man that taketh advantage of a condition in law shall take the land with such charge as he finds it. And therefore Littleton is here to be understood, that a condition in law is as strong as a condition.

[234 a.] (1) [See Note 148]
condition in deed, as to avoid the estate or interest it selfe, but not to avoid 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 than were when Littleton wrote: for example, for offices in any wise touching the administration or execution of justice, or clerkship in any court of record, or concerning the king's treasure, revenue, account, customs, alnage, auditorship, king's surveyor, or keeping of any of his majesties castles, forts, &c. For if any of these officers bargain or sell any of the said offices or any deputation of the same, or take any money or profit, or any promise, covenant, bond, or assurance, to have any money or reward for the same, the person so bargaining or selling, or that shall take any such promise, covenant, bond, or assurance, shall not only forfeit his estate, but also every person so buying, giving or assuring, be adjudged a disabled person to have or enjoy the same office or offices, deputation or deputations, &c. and that all such bargains, sales, promises, covenants, and assurances, as be before specified, shall be void, except as in the said act is excepted.

Sir Robert Vernon, knight, being coferer of the king's house of the king's gift, and having the receipt of a great summe of money yearly of the king's revenue, did for a certaine summe of money bargain and sell the same to sir A. I. and agreed to surrender the said office to the king, to the extent a grant might be made to sir A. who surrendered it accordingly; and thereupon sir A. was by the king's appointment admitted and sworn coferer. And it was resolved by sir Thomas Egerton, lord chancellor, the chiefe justice, and others to whom the king referred the same, that the said office was void by the said statute, and that sir A. was disabled to have or to take the said office; and that no non obstante could dispense with this act to enable the said sir A. for the reason and cause before-mentioned, Sect. 180. And hereupon sir A. was removed, and sir Marmaduke Darrell sworn (by the king's commandment) in his place. And note, that all promises, bonds and assurances, as well on the part of the bargainor as of the bargainee, are void by the same act. [*] Nullò aliére magis Romana respublica interit, quòd quod magistratus officio venala erant.

[g] Jugurtha going from Rome, said to the city, Vale venalis civitas, max peritura si emptorem venias.

Therefore by the law of England it is further provided, that no officer or minister of the king shall be ordained or made for any gift or brocage, favour or affection, nor that any which pursueth by him, or any other, privily or openly, to be in any manner of office, shall be 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 certainly never shall justice be duly administrd but when the officers and ministers of justice be of such quality, and come to their places in such manner as by this law is required.

"Tiel condition que est entendus per la ley entre annex a aucune chose, est auxy fort si come la condition fuit mise en escript." And this accords with that ancient rule, Utique forisor et potentior est dispositio legis quam hominis.
EN this manner it is of grants of the offices of steward, constable, bedelary, bailiwick, or alterations of offices, &c. Mes si tel office soit grant a un home, a aver et occupier per luy au son deputie, donque si l’office soit occupy per luy ou per son deputie, siemoe il devoyt per le ley entre occupie, ceo suffiset par luy, ou auterm ont le granter et ses heires potient ouste † le grantee, come est avantdit.

"SNESSCHALL." Of this I have spoken before.

"Constabularie." Of this likewise something hath beene spoken before. But a constable is often taken in the law for a warden or keeper, as Constabularius castri de Dover et 5. portuum; for the warden of the castle of Dover and the Cinque ports, &c. So as in this sense Constabularius is taken for Castellanus, and this is proved by the statute (*) of W. 1. ca. 7. Des pristes des Constables ou Castellains faiz des autres, &c. And Magna Carta, (b) c. 19. Nullus constabularius vel ejus baliivus casiat blada vel ailia catailla alicuius qui non sit de villi, ubi castrum suum situm est, &c. Stanford, fo. 152. Constabularius Turris London, for Custos Turris, 32 H. 8. ca. 28. Constable of the Forest, for the Keeper of the Forest.

"Bedelaryce." Bedell is derived of the French word Beadeau, which signifies a messenger of the court, or under bayliffe, in Latin Bedellius.

And the oath of a bedell of a manor is, that he shall duly and truly execute all such attachements and other process 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 chattels wayved, and estrayes.

"Baiiwiwke." Of this sufficient hath beene said before.

* le granter—il, L. and M. and Roh. † le grantee not in L. and M. nor Roh.
ITEM, estates de terres ou tenements pourront estre sur condition a ley, comme que sur l’estat fait ne fallascun mention ou rehersal fait de le condition. Sicome mittonus que un leas soit fait a le baron et a sa feme, a azer et tener a eux durant le couverture enter eux; en cest cas ils estat per terme de leurs deux vies sur condition en ley, seilice, si un de eux devie, ou que divorce soit fait enter eux, doneque bien lirroit a le lazer et a ses heires d’enterer, &c.

ALSO, estates of lands or tenements may bee made upon condition in law, albeit upon the estate made there was not any mention or rehersall made of this condition. As put the case that a lease be made to the husband and wife, to have and to hold to them during the couverture betweenee them; in this case they have an estate for terme of their two lives upon condition in law, scil. if one of them die, or that there be a divorce between them, then it shall bee lawfull for the lesser and his heires to enter, &c.

HERE Littleton termeth words of limitation to be conditions in law: for his first example is,

“Durant le couverture enter eux;” durante coorporitura inter eos. This word (durante) is properly a word of limitation, as durante viduitate, or durante virginitate, or durante vitâ, &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 et casta vixeret. Dummodo is also a word of limitation; as dummodo solvere talem redditum. Quamdiu also is a word of limitation, for if a man grant a rent out of the manor of D. quamdiu the grantor shall bee dwelling upon the manor, this is good, or quamdiu se bene gesserit.

And so by these words, donec, quouaque, usque ad, tamdiu, ubique.

“Si l’un de eux devie, &c.” For if any of them die the couverture is dissolved, and consequently the state determined by the limitation.

“Ou que divorce soit fait enter eux, &c.” Here is a distinction to be understood: for there bee two kinde of divorces, viz. one à vinculo matrimonii, and the other à mensa et thoro. Divortium dicitur a diversando, or divertendo, quia vir diversitut ab uxore. Divorces à vinculo matrimonii are these: Causa precontracti, causa muta, causa impotentiae seu frigditatis, causé affinitatis, causa consanguinitatis, &c. And I reade in an ancient record, coram rege

Termino

37 H. 6. 87.
10 Am. 4. 1
6 E. 3. 8, 9. 31.
3 E. 3. 18.
Anniuit 40.
10 H. 6. 84.
Tempe. E. 2.
Anniuit. 149.
11 Am. p. 8.
21 Am. p. 17.
20 E. 3. 68.
7 E. 4. 15.
6 E. 4. 35. 36.
9 H. 6. 30.
14 H. 6. 12.
87 E. 2. 27.
38 E. 3. 32. 33.
Herculan. 399.
10 E. 4. 28.
34 H. 6. hast. 12.
36 E. 4. 33.
44 B. 4. hast. 31. 23 E. 6.
Tit. Consult. 3.
6 E. 3. 349. 32 P.
Lib. 3. Cap. 5. Of Estates Sect. 381.

Terminal Passch. 50 E. 1. William de Chadworshe's case, that he was divorced from his wife, for that he did carnally know her daughter before he married the mother; all which are causes of divorce preceding the marriage.

A mens et thoro, as causae adulterii, which dissolveth not the marriage à vinculo matrimonii, for it is subsequent to the marriage. And the divorce that Littleton here speaketh of is intended of such divorces [*] as dissolve the marriage à vinculo matrimonii, and maketh the issue bastard, because they were not justa nuptiae. And therefore in Littleton's case though the husband and wife be divorced causae adulterii, yet the freehold continueth, because the coverture continueth. And it is further to be understood, that many divorces that were of force by the canon 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 God's law to marry, that is to say, that be not prohibited by the Levitical degrees.

A man married the daughter of the sister of his first wife, and was drawn in question in the ecclesiastical court for this marriage, alleging the same to be against the canons; and it was resolved [n] by the court of common-pleas, upon 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, inasmuch as it was not prohibited by the Levitical degrees, et sic de similibus. (1)

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ET que ils ont estate pur terme de leur deux vies, probatur sic: Chescun home que ad estate de franktenement en ascun terres outenemens, ou il ad estate en fee, ou en fee taile, ou pur terme de sa vie demesne, ou pur terme d'auter vie, et per tiel lease ils ont franktenement, mes ils n'ont per cest grant fee, ne fee taile, ne pur terme d'auter vie, ergo, ils ont estate pur terme de leur vies, mes ceo est sur condition en ley en le forme avantdiz; et en cest cas s'ils fieront want, le feoffor avera enuers eux briefe de wast supposant per son briefe, quod tenet ad terminum vitae, &c. * mes en son count il declare comen et en quel maner le leas fuit fuit.

AND that they have an estate for term of their two lives is proved thus: Every 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 term of his own life, or for term of another man's life, and by such a lease they have a freehold, but they have not by this grant fee, nor fee taile, nor for term of another's life, ergo, they have an estate for term of their own lives, but this is upon condition in lawe in forme aforesaid; and in this case if they shall [235. b.] do wast, the feoffor shall have a writ of waste against them, supposing by his writ, quod tenet ad terminum vita, &c. but in this count he shall declare how and in what manery the lease was made.

* mes—et, L. and M. and Boh. (1) [See Note 149.]

PROBATUR
Probatur sic. By this argument logically drawn, it appeareth, how necessary it is that our student should (as Littleton did) come from one of the universities to the study of the common law, where he may learn the liberal arts, and especially logic, for that teacheth a man not only by just argument to conclude the matter in question, but to discern between truth and falsehood, and to use a good method in his study, and probably to speak to any legal question, and is defined thus, dialectica est scientia probabiliter de quovis thesate discendi, whereby it appeareth how necessary it is for our student.

Sic supponens par seu brevis, quod tenet ad terminum vitae, &c." sect. 37 H. 2. 37. This and the rest of this section is evident and plain.

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In the same manner it is, if an abbob make a lease to a man for yeares, to have and to hold to him during the time that the lessee is abbob; in this case the lessee hath an estate for term of his own life: but this is upon condition in law, scilicet, That if the abbob resigne, or be deceased, that then it shall be lawfull for his successor to enter, &c.

Sic unus Abbe. So it is of a bishop, archdeacon, and other ecclesiasticall or temporall body politique or corporate, or of any officer or graduate, or the like.

Resigna ou soit depose. And so it is of a translation and occasion.

Sect. 383.

Also a man may see in the Book of Assises, anno 38 E. 3. in p. 3. a plea of Assise in this form following, scilicet, An assise of Novel Disceisin was sometime brought against d. who pleaded to the assise, and it was found by verdict, that the ancestour of the plaintifie devisd his lands to be sold by the defendant, who was his executor, and to make distribution of the money for his soule: and it was found, that presently

*p. 3. not in L. and M. nor Roh.

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tendis certaine summe de deniers pur les tenements, mes non pas al value, et que le executor puis avoir tenus les tenements en sa main demesse per deux ans, al entient de les vender plus chier a aucun autre; et trove fuit que il avait tout temps prist les profits de les tenements a son use desmesne, sans rien faire pur l'aime le mort, &c. Moubray* justice disoit, l'executor en tiel case est tenus per la ley a faire le vender a plus tout que il purroit apres la mort son testator, et trove est que il refuse de faire vendre, & issint de avoir un defect en luy, et issint per force del devise il fuit tenus d'acer mis tous les profits" accovenants de les tenements al use le mort, et trove est que il ad prise a son use demesne, et issint auter defect en luy. Per que fuit adjudge, que le plaintifte recovera.† Et issint appiert per del judgement, que per force del dit devise, l'executor n'avoi estatte ne poyier en les tenements, fors que sur condition en ley.

"LIVRE d'Assises" is a booke of the Reports 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 therein are upon wrtes of assises broucht, as hath been said, and which hath beene cited before.

"Devisa les tenements a vendre per son executor." This must be intended to be of lands devisable by custome, for lands by the common law were not devisable (as hath beene [236. a.] said): for in this section is implied a diversity, viz. when a man deviseth that his executor shall sell the land, there the lands descend in the meane time to the heire, and untill the sale bee made the heire may enter and take the profits. But when the land is devised to his executor to be sold, there the devise taketh away the descent, and vesteth the state of the land in the executor, and he may enter and take the profits, and make sale according to the devise. And here it appeareth by our author, that when a man deviseth his tenements to be sold by his executors, it is all one as if he had devised his tenements to his executors to be sold: and the reason is, because he deviseth the tenements whereby hee breakes the descent. (1)

"Moubray."

* justice disoit, not in L. and M. nor Rob.  
† accovenants—provenance, L. and M. and Rob.  
‡ Cr. added in L. and M. and Rob.

(1) [Sec Note 150]
upon Condition.

"Mowbray." John Mowbray was a reverend judge of the court of common pleas, and descended of a noble family.

"L'executo en tiel case est tenus per la ley a faire le vender a plus tost que il suivrait apres la mort son testator, &c." And the reason hereof is, for that the meaner 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 informe him to sell the lands as soon as he can, for otherwise hee shall take advantage of his owne laches: but if a man devise that his executor shall sell his land, there he may sell it at any time, for that he hath but a bare power, and no profit. And by this case it appeareth what construction the law maketh for the speedy payment of debts. And here is to be observed, that many words in a will doe make a condition in law, that make no condition in a deed: As here to devise lands to an executor ad vendendum, so if lands be devised to one ad solvendum 20l. to L. S. or paying twenty pounds to J. N. this amounts to a condition. And Crickmer's case was this: A man seised of certaine lands holden in socage had issue two daughters A. and B. and devised all his lands to A. and her heires, to pay unto B. a certaine summe of money at a certaine day and place; the money was not paid, and it was adjudged. That these words, "to pay," &c. did amount in a will to a condition; and the reason was, for that the land was deviseed to A. for that purpose, otherwise B. to whom the money was appointed to be paid, should be remediless, et interest reipublica suprema hoximum testamenta rata haber: and the lessee of B. upon an actuall ejectment recovered the moitie of the land against A.

"Et issint appiert per le judgement, &c." This conclusion upon a judgment is of great authoritie in law, quia judicium pro veritate scribitur, and, as it hath beene said, judicium is quasi jure dictum.

**Sect. 384.**

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**AND many other things there are of estates upon condition in law, and in such cases bee needed not to have shewed any deed, rehearsing the condition, for that the law it selfe purporth the condition, &c.**

**Ex paneo dico intendere plurima possis.**

More shall be said of conditions in the next chapter, in the chapter of Releases, and in the chapter of Discontinuance.

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† Ex multis autem chosae et cases y sont d'estates sur condition en la ley, not in L: and M: nec Rob.

† Prochein chapter—chapitre de dossants qui telens entres, L: and M: and Rob.

HEREBY
HEREBY it appeareth, that limitations (which, as hath beene said, Littleton, termeth conditions in law) may be pleaded without deed: and the reason of our author is observable, because the law in it selfe purporteth the condition, whereof somewhat hath bin said before, and therefore looke backe to the conditions in law, or words of limitation, and withall that a stranger may take advantage of a limitation, as hath beene said.

Littleton having spoken at large of conditions in deed and in law; somewhat seemeth necessary to bee said of defeasances, whereby the state or right of freehold and inheritance may be defeated and avoyed.

"Defeasance," Defeasantia, is fetched from the French word defaire, i.e. to defect or undone, injectum reddere quod factum est. There is a diversitie between inheritances executed, and inheritances executorie; as lands executed by livery, &c. cannot by indenture of defeasance be defeated afterwards. And so if a disseisee release a disseisor, it cannot be defeated by indentes of defeasance made afterwards; but at the time of the release or feoffment, &c. the same may be defeated by indentures of defeasance, for it is a maximine in law, Qua incontinenti sunt in case videntur. (1)

But rents, annuities, conditions, warranties, and such like, that be inheritances executorie, may be defeated by defeasances made, either at that time, or any time after: and so the law is of statutes, recognizances, obligations, and other things executorie.

"Ex paucis dictis intendere plurima possis."

Verses at the first were invented for the helpe of memorie, 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 necessarie to be spoken concerning clauses of provisos, containing power of revocation, which since Littleton wrote are crept into voluntarie conveyances, which passe by raising of uses, being 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 having issue divers somes, by deed indented, covenanteth in consideration of fatherly love, and for the advancement of the blood, or upon any other good consideration, to stand seised of three acres of land to the use of himselfe for life, and after to the use of Thomas his eldest son in tail; and for default of such issue, to the use of his second son in tail, with divers like remainders over; with a proviso that it shall be lawfull for the covenantor at any time during his life to revoke any of the said uses, &c. this proviso being coupled with an use, is allowed to be good, and not repugnant to the former states. But in case of a feoffment, or other conveyance, whereby the feoffee or grantee, &c. is in by the common law, such a proviso were merely repugnant and void.

And

(1) [See Note 151.]
And first, in the case aforesaid, if the covenanter, who had an estate for life, doe revoke the uses according to his power, he is seised againe in fee simple without entrie or claime.

Secondly, he may revoke part at one time, and part at another.

Thirdly, If he make a feoffment in fee, or levie 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 purposes in nature of a limitation.

Fourthly, If hee that hath such power of revocation hath no present interest in the land, nor by the cessor of the state shall have nothing, then his feoffment or fine, &c. of the land is no extinguishment of his power, because it is meere collaterall to the land.

Fiftly, By the same conveyance that the old uses be revoked, may new be created or limited, where the former cease ipsum facto by the revocation, without either entrie or claime.

Sixtly, That these revocations are favourably interpreted, because many mens inheritances depend on the same. (1) And here I may apply the aforesaid verse:

Ex fascio dictis intendere plurima possess.

(1) [See Note 132.]
Discents which toll entries are in two manners, to wit, where the discent is in fee, or in fee tail. Discents in fee which toll entries are, as if a man seised of certaine lands or tenements is by another dis-seised, and the dissector hath issue, and dieth of such estate seised, now the lands descend to the issue of the dissector by course of law, as heire unto him. And because the law cast the lands or tenements upon the issue by force of the discent, so as the issue cometh to the lands by course of law, and not by his owne act, the entrie of the disisee is taken away, and he is put to sue a writ of entrie sur disisein against the heire of the dissector, to recover the land.

"Discents" This word commeth of the Latine word discendere, id est, ex loco superiori in inferiori movere; and in legall understanding it is taken when land, &c. after the death of the ancestor is cast by course of law upon the heire, which the law calleth a discent. And this is the nobiest and worthiest meanes whereby lands are derived from one to another, because it is wrought and vested by the act of law, and right of blood, unto the worthiest and next of the blood and kindred of the ancestor, and therefore it hath not in the common law altogether the same significacion that it hath in the civil law; for the civilians call him, heredem, qui ex testamento succeedit in universum jus testatoris. But by the common law he is only heire which succeddeth by right of blood. And this agreeth well with the etymologie of the word (heire) to whom the lands descend, for heres dictur ab herendo, quia qui heres est heredit, hoc est, proximus est sanguinis illius cujus est heres. So as hee that is heres, sanguinis est heres, et heres hereditatis.

"Discents que tollent entries sunt en deux manieres." Here is an exact and perfect division made by our author, and yet withall plaine and perspicuous.

Now, as a discent is the worthiest meanes to come to lands, &c. so hath the heire more privileges than that other which by other order or meanes come to the lands, &c. as shall appeare hereafter.

Nota, In ancient time *if the dissector had beeene in long possession, the disisee could not have entred upon him." [*] Likewise the dissector


dsisein

* Sect—est, L. and M. and Roh. † &c. added in L. and M. and Roh.
Of Dissons.

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disseise could not have entred upon 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 verie ancient, for this was the law before the Conquest. [5] Porro autem quaedam maturis sine lice et controversia sedem incoluerit, cum conjux et proles sine controversia possidenta, si qua in illum licui fuerit illata viven-
tem, cum heredes ad loc (perinde atque in vivuo) accipiant.

And one of the reasons of this ancient law may be, that the heir cannot suddenly by entendment of law know the true state of his ti-
tle. And for that many-advantages follow the possession and tenant, the law taketh away the entrie of him that would not enter upon the ancestor, who is presumed to know his title, and driveth him to his action against the heir that may be ignorant thereof.

"Et morueris de tuis estate seised." To a dissect that taketh away an entrie a dying seised is necessarie, as here it appeareth ; but a man to other purposes may have lands by dissect though his ances-
tor died not seised, as hath beene said before.

"Des tennes ou tenements." That is, of such tenements as be corporeal, and doe lye in livery, and not of inheritances which lye in grant, as advozsons, rents, commons in grosser, and such like, which bee inheritances incorporeal, and yet are included within this word (tenements). For descents of them doe not put him that right hath to an action ; and the reason of this diversiteit is, for that houses serve for the habitation of men, and lands to be manned for their sustenance, and therefore the heir after a dissect shall not be molested or disturbed in them by enrire.

"Est juris un auter dissectio." The like law is of an abatement or intrusion, and of their feoffes, or donees, &c.

On the words of Littleton a diversiteit may be col-
lected, that if a recoverie be had by A. against B. and before execution B. die seised, this dissect shall not take away the entrie of the recoverer. But if after execution B. had disseised the recoverer and died seised, this dissect shall take away the entrie of the recoveror within the express express wordes of Littleton : and so it is in case of a fine.

[238. a.] A recoverie is had against tenant for life, where the remain-
der is over in fee, tenant for life dieth, he in remainder entred be-
fore execution, and dieth seised, the entrie of the recoveror is law-
full, because he is privie in estate ; otherwise it is if the dissect had beene after execution.

A. recovereth an advozson against B. in a writ of right, and hath judgement final ; the incumbent dieth ; B. by usurpation presents to the church, and his clarke is admitted and instituted ; B. dieth : A. is put out of possession, and the heir of B. is not so bound by the judgement either in blood or estate but that he shall present. [o] B. levies a fine to A. of an advozson to him and his heires ; after the church becomes void ; B. presents by usurpation, and his clarke is admitted and instituted : this shall put A. the conuese out of possession. And the reason of these two cases is, for that at the common law every presentation to a church did put the rightfull patron

[5] Lambh. expli-
cat. 2d. 160. 70.
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 usurpation were in both the said cases before execution, yet it put the rightfull patron out of possession. So note a diversitie betwenee a recoverie of land, and of an advowson.

"L'entrie le disseisise est tolle." (1) Here is one of the privileges which the law giveth to the heire by disseis of houses and lands.

[9] At the common law if the disseisor, abater, or intruder had died seized some after the wrong done, the disseisise and his heires had been barred of his and their entrie without any time limited by law; but now by the statute [7] made since Littleton wrote, it is enacted, that except such disseisor hath been in the peaceable possession of such manors, lands, &c. whereof he shall die seized by the space of five yeares next after such disseisise, &c. without entrie or continuall claime, &c. that such dyeing seized, &c. shall not take away the entrie of such person or persons, &c. But after the five yeares the disseisise must take such continual claim as our author hath taught us, the learning whereof is necessarie to be knowne. And it is said that abaters and intrudors are out of this statute (2), because the statute is penall, and extends only to a disseisor, and that was the most common mischiefe. Et ad ea quae frequentius accidunt, jura adiquantur.

The feoffice of a disseisor is out of the said statute, and remaines as at the common law. But to a disseisor, the statute is taken favourably for advancement of the ancient right; for whether the disseisise be without force, or with force, it is within the statute. And albeit the statute speake of him that at the time of such discontent had title of entrie, &c. or his heires, yet the successors of bodies politicke or corporate, so you hold yourself to a disseisise, are within the remedie of this statute, for the statute extendeth cleerely to the predecessor, being disseisise; and consequently without naming of his successor extendeth to him, for he is the person that at the time of such discontent had title of entrie.

But if a man make a lease for life, and the lessee for life is disseisise, and the disseisor die seized within five yeares, the lessee for life may enter; but if he die before he doth enter, it is said that the entrie of him in the reversion is not lawfull, because his entrie was not lawfull upon the disseisor at the time of the discontent, as the statute speakeith. But if lessee for life had died first, and then the disseisor had died seized, he in the reversion had beene within the remedie of the statute, because he had title of entrie at the time of the discontent, as the statute speakeith, and so within the express letter of the statute, albeit the disseisise was not immediate to him, and the like is to be said of a remainder, &c.

"Briefe d'entrie sur disseisise, Breve de ingressu super disseisi-nam." Of this writ somewhat shall be said in the next section.

(1) [See Note 163.] [2] [See Note 154.]

Sect.
DISCENTS en taile que toltent entries quid sit, sitcome home est disseise, et le disseisor done mesma la terre a un aiter en le taile, et le tenant en la taile ad issue et morust de tiel estate seise, et l'issue enter; en cest case l'enter le disseise est tolle, et il est miss de sur envers l'issue de le tenant en taile un briefe d'entre sur disseisin °.

"MORUST de tiel estate seise."

If a disseisor make a gift in taile, and the donee discontinue in fee, and disseise the disseissaie, and dieth seised, this disseinct shall not take away the entry of the disseisee, for the disseinct 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 did not seised of that estate, and of necessite there must be a dying seised, as hath beene said, which is a point worthy of observation, and implyeth many things.

If a disseisor make a gift in taile, and the donee hath issue and dieth seised, now is the entry of the disseisee taken away; but if the issue die without issue, so as the estate taile which discedended is spent, the entry of the disseisee is revived, and he may enter upon him in the reversion or remainder.

So if there be grandfather, father and son, and the son disseiseth one, and before the grandfather who died seised, and the land descendeth to the father, now is the entry of the disseisee taken away; but if the father dieth seised, and the land descendeth to the son, now is the entry of the disseisee revived, and he may enter upon the son, who shall take no advantage of the disseinct, because he did the wrong unto the disseisee. But in the case above said some have said, that where after such disseinct to the father, he made a lease to the son for terme of another man's life, upon whom the disseisee entred, that the son brought an assise and recovered; and the reason that hath beene yeelded is, for that the son had not the fee simple which he gained by disseiseh, but is a purchaser of the free-hold only from the father, and the disseinct remaine not purged. Contrarie it were, as it is there said, if the son were heire to the disseinct. But the booke cited there in Fitzherb. tit. title pliciei, 6; doth not warrant that case; and I hold the law to be contrarie, viz. that the disseisee in that case shall enter upon the disseisor, as well as if the father had conveyed the whole fee simple to the son, for in that case also the disseinct to the father is not purged. If a disseisor make a lease to an infant

"En cest case l'enter le disseise est tolle."

9 H. 7. 24. (Post. 240.)
13 H. 4. 3. 9.
33 H. 6. 2. b.
34 H. 6. 41. b.
per Motre.
per Cathem.
 Vide Sect. 306.
(Ana 306. 6.)

1575. 3. 9. 43.
Entre Cong. 187.
(Vol. 321. a.
 sect. 366.)

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Sect. 386.

DISCONTs in taile which take away entries are, as if a man be disseised, and the disseisor giveth 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 entry of the disseisee is taken away, and he is put to sue against the issue of the tenant in taile a writ of Entric sur disseisin.
But if he be in the reversion, disseise his tenant for life, and dieth seised, this descendent shall take away the entrie of the tenant for life (4).

So it is if there be tenant for life, the remainder in talle, the remainder in fee, and tenant in talle disseiseth the tenant for life and dieth seised, this shall take away the entrie of the tenant for life.

But if the king’s tenant for life be disseised, and the disseisor dieth seised; this descendent shall not take away the entrie of the lessee for life, because the disseisor had but a bare estate of freehold during the life of the lessee, and Littleton saith, that a descendent of an estate for terms of another man’s life shall not take away an entrie (5).

“En son demesne come de fee.” If an infant be disseised, and the disseisor die seised, and after the infant commeth to full age, he dieth before he attaineth to age; he did not seised of an actual seisin (1), but of a seisin in law, yet that dying seised shall take away the entrie of the disseisor. (5) And yet in pleading the second heir shall (as hath been said) make himself heir to the disseisor, and the land shall not be recovered in value for the warrantie made of other lands by the first heir; but though the first heir hath but a seisin in law, yet he is within the words of Littleton, for he was seised and dieth seised in his demesne as of fee.

Sect. 388.

ITEM, a descendent of reversion, or de remainder, ne uuques tollent entrie. Assiet que en tiel cases que tollent entrie per force de descents, il coerent que cely que morust seise ad fee et franktenement al tempes de son morant †, ou fee talle et franktenement al tempes de son morant, ou au terme tien descendent ne talle entrie.

A LSO, a descendent of a reversion, or of a remainder, doth not take away an entrie. So as in those cases which take away entries by force of descents, it behoveth that hee dieth seised of fee and freehold at the time of his decease, or fee talle and freehold at the time of his death, or otherwise such descendent doth not take away an entrie.

And therefore if a disseisor make a lease for years, and die seised of the reversion, this descendent shall take away the entrie of the disseisor, because hee did seised of the fee and franktenement. Like law it is if the land be extended upon a statute, judgement, 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 reversion, this descendent shall not take away the entrie of the disseisor, for that though he had the fee; yet he had not the franktenement (2).

So it is of a tenant in talle mutatie mutandies; and note, the law doth ever give great respect to the estate of freehold, though it be but for termes of life.

* &e. added in L. M. and Rob.
† ou fee talle et franktenement al tempes de son morant, ab in L. M. and Rob.
(4) [See Note 157.]
(5) [See Note 159.]
(1) [See Note 159.]
(2) [See Note 156.]
If a disseisor make a lease for term of his own life, and dieth, this descent shall not take away the entrie of the disseissee; for though the fee and franktenement descend to the heire of the disseisor, yet the disseisor died not seised of the fee and franktenement; and Littleton saith, that unless he hath the fee and franktenement at the time of his decease, such descent shall not take away the entrie (3).

Sect. 389.  

ITEM, come est dit de descendants que discendont al issue de ceux que morront seises, &c. mesme la ley est louissont aucun issue, mes les tenements descendont al frere, soer, uncle, ou aultre cosin de celuy que morruit seise. 

By this it appeareth, that a descent, in the collateral line doth take away an entrie, as well as in the lineall.

"Moront seises, &c." Here (&c.) implieth fee simple, or fee tale.

[240. a.]  

Sect. 390.  

ITEM, si soit seignior et tenant, et le tenant soit disseisie, et le disseiur aliena a un aultre en fee, et l'alience devie sans heire, et le seignior enter come en son escheat: en cest case le disseisie poit enter sur le seignior, par ceo que le seignior ne vient a la terre per descent, mel per voy d'escheat. 

"Le disseisie poit enter sur le seignior, &c." For albeit the alience of the disseisor die seised, and the lord by escheat commeth to the land by act in law, yet because the land descendeth not to him, the entrie of the disseissee in respect of the escheat shall not be taken away. For a dying seised, and a descent, and not a dying seised and an escheat, doth take away the entrie: for (as hath beene said) the descent is the worther title. But in that case, if the lord by escheate die seised, and the land descend to his heire, that

4 &c. added L. and M. and Roh.
(3) [See Note 161.]  
(1) [See Note 162.]
that descent shall take away the entrée of the disseisee. So it is if the disseisor die seised, and the heir of the disseisor dieth without heir, the disseisee cannot enter upon the lord by escheat. So as there is a diversitie as touching the descent, when after a descent cast, the issue in tale dieth without issue, and when after a descent cast, the heir in fee simple dieth without heir: for he in the reversion, or remainder, upon a state tale claimeth in above the state tale, but the lord by escheat claimeth in under the heir in fee simple.

Sect. 391.

ITEM, si home seisie de certaine terre en fee, ou en fee tale, sur condition de render certaine rent, ou sur auter condition, coment que tiet tenant seisie en fee, ou en fee tale, moruit seisie, unicore si le condition soit enfreint en lour vies, ou apres lour decease, ceo ne tollera pas l'entrée del feoffor, ou del donor, ou de lour heires, pur ceo que le tenancie est charge ove le condition, et l'estate del tenant est conditionall, en queconque mains que le tenancie vient, &c.

ALSO, if a man be seised of certain land in fee, or in fee tale, upon condition to render certain rent, or upon other condition, albeit such tenant seised in fee, or in fee tale, dieth seised, yet if the condition bee broken in their lives, or after their decease, this shall not take away the entrée of the feoffor or donor, or of their heires, for that the tenancie is charged with the condition, and the state of the tenant is conditionall, in whose hands soever that the tenancie commeth, &c.

UPON these two sections is to bee observed a diversitie betweene a right, for which the law giveth a remedie by action, and a title, for which the law giveth no remedie by action, but by entrée only (2). For example, the feoffee upon condition in this case hath a right to the land, and therefore his entrée may be taken away, because he may recover his right by action; but the feoffor or donor that hath but a condition, his title of entrée cannot be taken away by any descent, because he hath no remedie by action to recover the land, and therefore if a descent should take away his entrée, it should barre him for ever. And the law is all one whether the descent were before the condition broken, or after.

Also hee that hath a title to enter upon a mortmaine shall not be barred by a descent, because then he should bee [240. b.] without all remedie. And so it is in case where a woman hath a title to enter causa matrimonii praeclusi, no descent shall take away her entrée, because she hath but a title, and no remedie by action (1).

(2) [See Note 163.]  (1) [See Note 164.]
ITEM, si tield tenant sur condition soit disseisie, et le disseisor devie est disseisie, et la terre descendist al heire le disseisor, ore le entrer le tenant sur condition, que fust disseisie, est toll. Mea uncere si le condition soit en freint*, donque poit le feffor ou le donor que furent estate sur condition, ou leur heirs, enter, caus qui supra.

ALSO, if such tenant upon condition be disseised, and the disseisor die thereof seised, and the land descend to the heire of the disseisor, now the entrer of the tenant upon condition, who was disseised, is taken away. Yet if the condition be broken, the feffor or the donor which made the estate upon condition, or their heirs, may enter, causa quia supra.

If a man be seised of lands in fee, and by his last will in writing deviseth the same to another in fee, and dieth, after whose decease the freehold in law is cast upon the devisee, and the heire, before any entrie made by the devisee, entrith, and dieth seised, this descent shall not take away the entrie of the devisee; for if the descent, which is an act in law, should take away his entrie, the law should barre him of his right, and leave him utterly without remedie (2). And so it is of him that entrith for consent to a ravishment; and so it was resolved in the case of Martin Trotte of London [n] Pauche 32 El. in Com. Banco; and accordingly was the opinion of the court of common pleas, [o] Pauche 1 Jac. Reg. To this may be added as a like case, the king's patentee before he enter, &c. Another reason wherefore a descent 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 remains in the same essence that it was in at the time of the creation of it, and cannot be divested or put out of possession, as lands and tenements may (3).

ITEM, si un disseisor devie seiese, &c. et son heire enter, &c. lequel cadousa la feme le disseisor de la tierce part de les tenements, &c. en cest cas quant a cest tierce part que est assigne a la feme en dower, maintenant apres ces que la feme enter, et ad le possession de mesme la tierce part, le disseisor poit loyament enter sur la possession le feme en mesme la tierce part.

ALSO, if a disseisor die seised, &c. and his heire enter, &c. who endoweth 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 entretith, and hath the possession of the same third part, the disseisee may lawfully enter upon the possession of the wife into the same third part.

* &c. added in L. and M. but not in Roh.

(2) [See Note 165.] (3) [See Note 166.]
Et la cause est, pur eeo que quant la feme ad son dower, et serva adjudge eins immediate per son baron, et nemy per l'heire; et issint quant a le frank-tenement de mesme la tierce part, le discent est debase*. Et issint poises veir, que devant le endowment le dis-seece ne poit enter en aucum part, &c. et apres le dowment il poit enter † sur la feme, &c. mes encor il ne poit enter sur les autrez deux parts que l'heire le disesoir ad per le discent.‡

"DEVIE"seisse, &c." viz. in fee simple or in fee taine.

"Et son heire enter, &c." So as he hath an actual fee simple.

"De la 3. part de les tenements, &c." id est, in severalité.

By this section it appeareth, that an entre being taken away by the discent, is revived by the endowment, albeit the tenant in dower shall have it but for her life. And the cause is, for that although the heire entred, yet when the wife is endowed she shall not be in by the heire, [a] but immediately by her husband being the diseseeor, who is in for her life by a title paramount the dying seised and discent, and therefore in judgement of law, the discent as to the freehold, and the possession which the heire had is taken away by the endowment; for that the law adjudgeth no meane seisin betwene the husband and the wife.

If there bee lord, mesne and tenant, the mesne doth grant to the tenant to acquire him against the lord and his heires, the lord dies, his wife hath the seigniorie assigned to her for her dower, and disfraines the tenant; albeit the grant was to acquire him against the lord and his heires only, yet because shee continued the estate of her husband, and the reversion remained in the heire, this grant of acquitall did extend to the wife, which is a notable case.

If after the dying seised of the diseseeor, the diseseec abate, against whom the wife of the diseseeor recover by confession in a writ of dower, in that case, though the discent bee avoided as Littleton here saith, yet the diseseeor shall not enter upon the tenant in dower, because the recoverie was against himselfe; but if he had assigned dower to her in pais, some say he should enter upon her (3).

A man makes a gift in taila reserving twenty shillings rent, and dies, the donee takes wife, and dieth without issue, the heire of the donor entret and endoweth the wife, shee is so in of the estate of her husband, that albeit the estate taile be spent, and the rent reserved thereupon determined, yet after she be endowed, she shall be attenant.

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* &c. added in L. and M. and Boh.
† sur la feme, not in L. and M. nor Roh.
‡ &c. added in L. and M. and Boh.
(1) [See Note 167.]
(2) [See Note 168.]
(3) [See Note 169.]
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 services; but if any services be encroached, albeit that encroachment shall bind the heire, yet the wife shall be contributoris
but for the services of right due (4).

"Iaissant poës voir, que devant le douvment le dissecsee ne poët
enter, et apres l'endowment il poët enter, &c." The like hath beene said before in this chapter, Sect. 386, where the enric of the
disseese may be taken away for a time, and by matter ex post facto
revived againe.

Nota, albeit the disseisor after a descant taketh to him but an es-
tate for life, yet when the disseese doth enter upon him, he shall
thereby devest the reversion, for the estate of freehold is that where-
upon a precipe doth lye, and therefore the enric of the disseese is
available in law, as if he had recovered it in a precipe. And so
it is a disseissor make a lease for life, and grant the reversion to the
king, the enric of the disseese upon the tenant for life shall devest
the reversion out of the king in the same manner as if the disseese
had recovered the lands against the tenant for life in a precipe.

[341. b.]

ITEM, si un feme soit seisie de
terre en fee, dont jec ouy droit et
fille d'entree, si la feme prent baron,
dom issue enter eux, et puis la feme
terisseise, et apres le baron devrie, et
l'issue enter, &c. en cest case jec * poy
enter sur la possession l'issue, pur ceo
qu'elle ne vient a les tenements
immediate per descant apres la mort
ou mere, &c. † eins per le mort del
pier (1).

Contrarium tenetur P. 9 Hen. 7.
par tout le court, & M. 37 H. 6.

ALSO, if a woman be seised of
land in fee, whereof I have
right and title to enter, if the woman
take husband and have issue be-
tweene them, and after the wife die
seised, and after the husband die,
and the issue enter, &c. in this case
I may enter upon the possession of
the issue, for that the issue comes
not to the lands immediately by
descant 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.

EN cest case jec poy enter sur la possession l'issue, &c.
For here was but a descant of a reversion at the time of the
dying seised, for the estate of the tenant by the courtesie had com-
bencement by the having of issue, and is consummate by the death of
the wife, so as the fee and frantemenent did not after the decease of
the wife descend to the heire, and albeit the tenant by the courtesie
dieith afterwards, and that the frantemenent is cast upon the heire,
so as now he hath the fee and frantemenent by descant, yet because
the

* poy not in L. and M. and Bob.
† eins per le mort del pier, and the note that follows, not in L. and M. nor Bob.

(4) [See Note 170.] (1) [See Note 171.]

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Sect. 395.

the heire came not to the fee and frantkenement at once, immedi-
ately after the decease of the wife, such a mediate descent shall not
take away the entrie of the disseisee. On the other side, an imme-
diate descant may take away an entrie for a time, and mediately
may be avoided by matter ex post facto, as hath beene said. But if
a dying seised taketh not away the entrie of him that right hath at
the time of the descant, it shall not by any matter ex post facto take
away his entrie.

If a disseisor die without heire, his wife privement enseit with an
issue, and after the issue is borne, who entreth into the land, he hath
the land by descant, and yet thereby the entrie of the disseisee shall
not be taken away, because, as Littleton here saith, the issue com-
meth not to the lands immediately by descant, efter the decease of
the father.

And so it is if a disseisor make a gift in taile, the remainder in
fee, and the donee dieth without issue, leaving his wife privement
enseit with a sonne, and he in the remainder enters, and after the
sonne is borne, who entreth into the land, this descant shall not take
away the entrie of the disseisee, caud quâ supra.

"Contrarium tenetur, &c." This is an addition, and therefore
to pass over. And at this day, this case of Littleton is
holden for cleere law.

Sect. 395.

TEM, si un disseisor enfeoffa son
pier eu fee, et le pier morust de
tiel estate seise, per que les tenements
disdont a le disseisor, † come fits
et hoire, &c. en cest cas the disseisee
bien poit enter sur le disseror, nient
obstant le descant, pur ceo que quant
al disseisin, le disseisor serra adudge
cins forsque come disseisor, nient ob-
stant le descant, † quia particeps cri-
minis.

ALS, if a disseisor enfeoffs his
father in fee, and the father die,
seised of such estate, by which the
land descends to the disseisor, as
sonne and heire, &c. in this case the
disseisee may well enter upon the
disseisor, notwithstanding
the descant, for that as to [242.a.]
the disseisin, the disseisor shall be
adjudged in but as a disseisor, not-
withstanding the descant, quia par-
ticeps criminis (1).

OF this sufficient hath beene said before in this chapter, Sect.
386. And regularly it is true, that albeit a descant be cast,
and the entrie of the disseisee taken away, yet if the disseisor com-
meth to the land againe, either by descant, or purchase of any
estate or freehold, which is implied in the (&c.) the disseisee may
enter upon him, or have his assise against him, as if no descant or
meane conveyance had beene, quia particeps criminis.

† ent added in L. and M. 1 &c. added: quia particeps criminis, not in L. and M.

(1) [See Note 172].
ITEM, si home seised de certaine terre en fee ad issue deux fits, et morust seised, et le puisne fits en terre per abatement en la terre, quel ad issue, et de cec morust seised, et le tenements descendant al issue, et l’issue en terra: en cest case le fits eigne, ou son heire, poit enter per la ley sur l’issue del fits puisne, nient contristant le discent, pur cec quant le fits puisne abatit en la terre, apres le mort son pier devant aucune entrie per le fits eigne faict, la ley intendra que il entra en claymant como heyre a son pier. Et pur cec que l’eigne fits claymata per mesme title, cestascouvoir, como heyre a son pier, il et ses heires poient enter sur l’issue de puisne þ fits, nient obstant le discent, &c. pur cec que ils claymont per un mesme title. Et en mesme le maner il serra, si furent plusieurs discents de un issue a un auter issue del puisne fits.

ALSO, if a man seised of certaine land in fee have 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 descend to his issue, and the issue enters into the land: in this case the eldest sonne, or his heire, may enter by the law upon 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 intend that heo entred claiming 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, hee and his heires may enter upon the issue of the younger son, notwithstanding the discent, &c. because they claim 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 (1).

MES en tiel case, si le pier fit seised de certaine terres en fee, et ad issue deux fits, et denie, et l’eigne þ fits enter, et est seised, &c. et puis le puisne frere luy disseeist, per quel disseisin il est seised en fee, et ad issue, et de tiel estate morust seised, donques l’eigne frere ne poit enter, mes est mis a son briefe d’entre sur disseisin, &c. § de recoverer la terre. Et la cause est, pur cec que le puisne frere vient a les tenements per tortious disseisin fait a son eigne frere, et per cel tort la ley ne poit

† fuit not in L. and M.
† fits—frere, L. and M. and Rob.
§ &c. not in L. and M. nor Rob.

BUT 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, and is seised, &c. and after the younger brother disseeiseth him, by which disseeisin 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 entrice sur disseisin, &c. to recover the land. And the cause is, for that the youngest brother commeth to the lands by wrongful

(1) [See Note 173.]
the heir came not to the fee and franktenement at once, immediately after the decease of the wife, such a mediate descendent shall not take away the entrie of the disseisee. On the other side, an immediate descendent may take away an entrie for a time, and mediatelie may be avoided by matter \textit{ex post facto}, as hath beene said. But if a dying seised taketh not away the entrie of him that right hath at the time of the descendent, it shall not by any matter \textit{ex post facto} take away his entrie.

If a disseisor die without heir, his wife priverment enseint with an issue, and after the issue is borne, who entreth into the land, he hath the land by descendent, and yet thereby the entrie of the disseisee shall not be taken away, because, as \textit{Littleton} here saith, the issue cometh not to the lands immediately by descendent, after the decease of the father.

And so it is if a disseisor make a gift in taille, the remainder in fee, and the donee dieth without issue, leaving his wife priverment enseint with a sonne, and he in the remainder enters, and after the sonne is borne, who entreth into the land, this descendent shall not take away the entrie of the disseisee, \textit{causd quid suprat.}

\textit{“Contrarium tenetur, &c.”} This is an addition, and therefore to be passed over. And at this day, this case of \textit{Littleton} is holden for cleere law.

\textit{ITEM, si un disseisor enfeoffa son pier eu fee, et le pier morust de tel estate seiste, per que les tenements descendent a le disseisor, \textit{\textdegree} come fite et heire, &c. en cest case le disseisee bien poit enter sur le disseisor, nient obstant le descendent, pur ceo que quant al disseisin, le disseisor serra adudge cins forsque come disseisor, nient obstant le descendent, || quia parteiceps criminis.}

\textit{ALSO, if a disseisor enfeoffe his father in fee, and the father die, seised of such estate, by which the land descend to the disseisor, as sonne and heire, &c. in this case the disseisee may well enter upon the disseisor, notwithstanding \textit{[242.a.]} the descendent, for that as to the disseisin, the disseisor shall bee adjudged in but as a disseisor, notwithstanding the descendent, \textit{quia particeps criminis} (1).}

\textit{OF this sufficient hath beene said before in this chapter, Sect. 386. And regularly it is true, that albeit a descendent be cast, and the entrie of the disseisee taken away, yet if the disseisor cometh to the land againe, either by descendent, or purchase of any estate or freesthold, which is implied in the (\&c.) the disseisee may enter upon him, or have his assise against him, as if no descendent or meane conveyance had beene, \textit{quia particeps criminis.}

\(\textit{\textdegree}\) \textit{em} added in L. and M. 1 \&c. added: \textit{quia particeps criminis, not in L. and M.}\n
\(1\) [See Note 172].
ITEM, si home seise de certaine terre en fee ad issue deux fils, et morust seiseis, et le puisne fils entra per abatement en la terre, quel ad issue, et de ceo morust seiseis, et les tenementes discedent al issue, et l'issue entra en la terre: en cest case le fils eigne, ou son heire, poit enter per la ley sur l'issue del fits puisne, nient contraiteant le discent, pur ceo que quant le fils puisne abatist en la terre, aprés le mort son pier devant ascueintie per le fits eigne † fait, la ley intendra que il entra en claymont come heyre a son pier. Et pur ceo que l'eigne fils claymait per mesme le title, cestascevoir, come heyre a son pier, il et ses heires poient enter sur l'issue de puisne † fits, nient obstant le discent, &c. pur ceo que ils claymait per un mesme title. Et en mesme le manier il sera, si fueront plusieurs discents de un issue a un auter issue del puisne fits.

ALSO, if a man seised of certaine land in fee have 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 descend to his issue, and the issue enters into the land: in this case the eldest sonne, or his heire, may enter by the law upon 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 intend that hee entred claiming as heire to his father. And for that the eldest sonne claimses by the same title, that is to say, as heire to his father, hee and his heires may enter upon the issue of the younger son, notwithstanding the discent, &c. because they claim 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 (1).

MES en tiel case, si le pier fuit seiseie de certaine terres en fee, et ad issue deux fits, et devie, et l'egne † fits enter, et est seiseis, &c. et puis le puisne frere cluy disseisist, per quel dis-seisin il est seiseien fee, et ad issue, et de tiel estate morust seiseie, donques l'egne frere ne poit enter, mes est mis a son brieve d'entre sur disseisin, &c. de recoucer la terre. Et la cause est, pur ceo que le puisne frere vient a les tenementes per tortious disseisin fait a son eigne frere, et per celort la ley ne poit

†fuit not in L. and M.
†fits—frere, L. and M. and Rob.
§ &c. not in L. and M. nor Rob.

(1) [See Note 173.]
poit entender que il claime come heire a son pier, nient plus qu'un estrange person que ust dissesie l'aigne frere § que n'avoit aucun title, &c. Et isissant poyes veier la diversiteit, lou le puisne frere enter apres le mort le pier devant aucun en Trye fait per l'aigne frere en tiel cas, jf et ou l'aigne frere enter apres la mort son pier, et puis est dissesie per le puisne frere, lou le puisne frere puis morust seisie §.

father, and after is disseed by the younger brother, where the younger after dieth seised.

"E [242. b]

(Nov. 399. 6.)

Sol. 293. 293.
Sol. 196. 196.
Fina lib. 5.
cap. 1. 8 &c.
20 E. 2.
Darr. present. 23.
12 E. 5.
Mord. pl. ultim.
13 E. 1. Mord. 47. 20 Ass. 11.
F. N. E. 104. b. (2 Rep. 43.) (Post. 271. b.)

Lands were given 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 died, the eldest sonne abated and died seised, this descent did take away the entrie of the daughters, because they claimed not by one tiate. And in ancient booke the eldest sonne is called heres proprin-
gius, and the younger sonne heres remotus. And albeit the eldest sonne hath issue and dieth, and that after his decease the youngest son or his heire enthr, and many descents be cast in his line, yet may the heires of the eldest sonne enter in respect of the privite of the bloud, and of the same claime by one titre; but if the youngest sonne make a feoffment in fee, and the feoffee die seised, that descent shall take away the entrie of the eldest, in respect that the privite of the bloud 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 enthr by abatment, and dieth seised, it shall barre his elder brother of his enthr. But if the eldest sonne enthr, and gaineth an actual 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 terre must be vacua when the youngest sonne enters.

§ &c. added in L. and M. and Roh.

f frere, not in L. and M. nor Roh.

§ &c. added in L. and M. and Roh.
enters by abatement, as *Littleton* saith, because he hath more colour in that case to clame, 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, upon whom the youngest sonne entret and disseise him, and die seised, this discendent shall binde the eldest, for he entred by disseisyn, and not by abatement.

If a man bee seised of lands of the nature of burgh English, and hath issue two sones and die, and the eldest sonne before any entrie made by the youngest, entret 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 not an intrusion; for if the father make a lease for life, and hath issue two sones and dieth, and the tenant for life dieth, and the youngest sonne intrude, and die seised, this discendent shall not take away the entrie of the eldest. But if the father hath made a lease for yeares it had bene otherwise, for that the possession of the lessee for yeares maketh an actuall freehold in the eldest sonne. And it is to be observed, that the reason of *Littleton* in this case (for both the brethren hold by one title) holdeth also in many other cases.

If two copercceners make partition to present by turne, and one of them usurpe in the turne of the other, this usurpation shall not put the other out of possession, because they clame by one title.

If two copercceners be, and they severall present to the ordinarie, yet the church is not litigious, because they clame all by one title (1).

If upon a writ of *diem clausit extremum*, the youngest sonne be found heire, the eldest son hath no remedy by the common law, because they clame by one title; but otherwise it is if they clame by severall titles, as it appeareth in our bookes (2). But this is now holpen by a statute made since *Littleton* wrote.

If two persons be in debate for tithes, which amount to above the fourth part, and one man is patron of both churches, no *ind icavit* doth lye, for that both incumbents clame by one and the same patron. *Et sic de similibus.*

And where *Littleton* saith, seised of lands in fee, the same law it is if a man bee seised of lands in tail, and hath issue two sones mutatis mutandis.

*"Et est seisin, &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.

*"N'avoit aucun 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 diversitie holden in our bookes [o] where one hath a colour or pretence of right, and when he hath none at all, whereof you may read plentifully in our bookes.

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EN mesme le manier est, si home seissie de certaine terre en fee ad issue deux files et devie, l’eigne file entra en la terre claymant tout la terre a luy, et ent solemment prist les profits, et ad issue et morust seissie, per que son issue enter, quel issue ad et devie seissie, et le second issue enter †, & sic ultra, uncere le puisne file ou son issue, quant a le moitie poit enter sur quecunque issue de l’eigne file, nient obstant tiel discent, pur ceo que ils claimont per un mesme title, &c. Mes en tiel case si ambitdeux soers avoyant enter apres la mort lour pier, et ent fueront seissies, et puis l’eigne soer ust disseissie la puisne soer de ceo que a luy affiert, et ent fuit seissie en fee, et ad issue, et de tiel estate morust seissie, per que les tenents discendont a issue del eigne soer donque le puis-ne soer ne ses heires ne poient enter, &c. caus: qu supr:, &c.

issue of the elder sister, then the younger sister nor her heirs cannot enter, &c. caus: qua supr:, &c.

(Mo. 66.)
See more of this in the chapter of Warrantie, Sect. 710.

Wb. 39. 40.

Vide Sect. 710.

(4 Levo. 62. 174. &c.)

IlAIMONT tout la terre.” Here it appeareth, that when one coparcener doth specially enter, claiming the whole land, and taking the whole profits, that she gains 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 divesting of the moitie of her sister (1).

If one coparcener enter claiming the whole, and make a feoffment in fee, and take backe an estate to her and her heires, and hath issue and die seised, this descant shall take away the entrie of the other sister, because by the feoffment the privitie of the coparcenerie was destroyed.

“Claimont per un mesme title, &c.” Of this sufficient hath beene said in the next precedent Section.

“Ne poient enter, &c.” Of this there hath beene also spoken in the same Section.

† &c. added L. and M. and Roh.

(1) [See Note 175.]


ITEM, si home est seisie de certaine terre en fee, et ad issue

dux filis, et l'eigne filis est bastard, et le puissance frere est mulier, et le pier
devie, et le bastard enter enclamant
come heire a son pier, et occupia la
terre tout sa vie, sans aucun entre fait
sur lui per le mulier, et le bastard ad
issue, et morust seisie de tiel estate en
fee, et la terre descendist a son issue,
et son issue enter, &c. en cest case le
mulier est sans remedie, car il ne poit
enter, ne azer aucun action pur reco-

"S'ENISSE en fee."

" Mulier, seu filius mulieratus." Mulier hath three significations,
First. Sub nomine muleris continetur quattuor femina. Secondly, Proprié sub nomine mulieris, continetur virgo. Thirdly, Appellat-
sione muleria, in legibus Anglia, continetur uxor. Et sic filius na-
tus vel filia nata ex justa uxor, appellatuar in legibus Anglia filius
mulieratus, seu filia mulierata, a some muli r, or a daughter mulier.

Sicut bastardus (2) dicturus a Graeco verbo Hasvari , i. e.
meretrix, seu concubina, quae procreatur ex m retice
seu concubinde. In English hee is called base borne, and thereupon
some say, that a bastard is as much to say, as one that is a base
natural, for aerd signifeth nature. I read in Flüta [fl] that there
bee three kinds of bastards, viz. mancer, nothus, & spurius, which
are described in two old verses:

Manescibus scortum, notho machus dedit ortum.
Ut seges a spicd, sic spurius est ab amicd. (1)

But we terme them all by the name of bastards that be born out
of lawful marriage. By the common law [r] if the husband be
within the four seas, that is, within the jurisdiction of the king
of England, if the wise hath issue, no profe is to be admitted to
prove the childe a bastard, (for in that case filiation non potest
probari)

* &c. not in L. and M. nor Boh.

(2) [See Note 176.]  (1) [See Note 177.]

 provinci ) unless the husband hath an apparent impossibilitie of pro-
creation; as if the husband be but eight yeares old, or under the age of pro-
creation, such issue is bastard, albeit he be borne within marriage (2). [2]
But if the issue be borne within a moneth or a
day after mariage, betweene parties of full lawfull age, the child is
legitimate (3).

"Discendia a son issue." For if the bastard dieth seised without
issue, and the lord by escheat entretith, this dying seised shall not
barre the mulier, because there is no discent. If the bastard enter,
and the mulier dieth, his wife privement enseinthis with a sonne, the
bastard hath issue and dieth seised, the sonne is borne, his right is
bound for ever. But if the bastard dieth seised, his wife enseinthis
with a sonne, the mulier enter, the sonne is borne, the issue of the
bastard is barred: for Littleton putteth his case, that there must not
only be a dying seised, but also a discent to his issue.

"Et son issue enter, &c." And so it is to be understood, 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
discent differeth from other discents, for this discent barreth the
right of the mulier, whereas other discents do take away the en-
trie only of him that right hath, and leaveth him to his action, but
here by the dying seised of the bastard, his issue is become lawfull
heire. [2] It is holden that if the mulier bee within age at the
time of the dying seised, that nevertheless hee shall bee barred,
because the issue of the bastard is in judgement of law become
lawfull heire, and the law doth preferre legitimation, before the
privilege of infancie.

And the reason of this case is, for that Justum non est aliqumen
post mortem facere bastardum, qui ideo tempore visse esse pro legi-
timo habebatis. And so it seemeth to be, that if a man hath issue a
sonne being bastard eigne, and a daughter, and the daughter is mar-
rried, the father dieth, the sonne entretith and dieth seised, this shall
barre the same covert. And the discent in this case of servages, rents,
reversions, expectant upon estates late, or for life, whereupon rents
are reserved, &c. shall binde the right of the mulier, but a discent
of these shall not drive them, that right have, to an action.

So if the bastard dieth seised, and his issue endoweth the wife
of the bastard, yet is not the entrie of the mulier, lawfull upon the
tenant in dower, for his right was barred by the discent.

If the bastard eigne entreteth into the land, and hath issue, and
entretith into religion, this discent shall barre the right of the mulier.

"Ad issue deux firts." If a man hath issue such a bastard as is
foresaid, and dieth, and the bastard entretith and dieth seised, and
the land descendeth to his issue, the collateral heire of the father
is bound, as well as where there be two sonnes.

And

And where our author speaketh of sones, so it is if a man hath issue two daughters, the eldtest being a bastard, and they enter and occupie peaceably as heires; now the law in favour of legitimation shall not adjudge 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 shall inherit.

[b] And in the same case, if both daughters enter and make partition, this partition shall bind the mulier for ever.

c And an assise of mort d'ancester lieth not betweene the bastard and the mulier in respect of the proximitie of blood.

And the bastard being impleded or vouched shall have his age.

"Et le bastard enter come heire a son prier." If a man hath issue bastard eigne and mulier fuisme, and the bastard in the life of the father hath issue and dieth, and then the father dieth seised, and the sonne of the bastard entreth, as heire to his grandfather, and dieth seised, this discourse shall bind the mulier.

"Pur ceo que est autien ley en tiel case, use, &c." As hereafter in our Commentarie upon the two next Sections shall appear, by our ancient booke, and the autentique statutes of the realme. And here is implied how necessary it is, after the example of our author, to looke into the antiquities, then which nothing is more venerable, profitable, and pleasant.

Sect. 400.

MESilad estre l'opinion d'asuns, que ceo serra intiendre lou lepier ad un fil bastard per un feme, et puis espousa mesme la feme, et apres le espousil ad isseure per mesme la feme un fils, ou un fille bastard, et puis le pier morust, &c. si tiel bastard enter, &c. et ad issue et devie seise, &c.done acar a l'issue de tiel bastard le tier decerement a luy, come avant est dit, &c. et nemy asceun aiter bastard la mere que ne fuit empeque espouse a son pier. Et ceo semble bon et reasonable opinion: car tier bastard nee devant espousils celebres prentier son pier et mere, per la ley de saint eglise est mulier, coment que per la ley del terre il est bastard, et issiit il ad un colour d'arter come heire a son pier, pur ceo qu'il est per un ley mulier, &c. seise, per la ley de saint eglise. Mes autierment

BUT it hath bee 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 entredth, &c. and hath issue and die seised, &c. then shall the issue of such bastard have the land cleerely to him, as it is said before, &c. and not any other bastard of the mother which was never married to his father. And this semeth to be a good and reasonable opinion: for such a bastard borne before marriage celebrated betweene his father and his mother, by the law of holy church is mulier, albeit by the law of the land he is a bastard, and so he hath a colour.

(1) [See Note 179.]

auterment est de bastard que n'ad asc-
curn *maner colour d'entrecome heire,
entant que il ne poit per nuil ley estre
dit mulier, car tiel bastard est dit en la
ley, quasi nullius filius, &c.

no law bee said to be mulier, for such a bastard is said in the law to be
quasi nullius filius, &c. (2)

a colour to enter as heire to his fa-
ther, for that he is by one law mulier,
scilicet, by law of holy church. But
otherwise it is of a bastard which
hath no manner of colour to enter
as heire, in so much as hee can by
no law bee said to be mulier, for such a bastard is said in the law to be
quasi nullius filius, &c. (2)

"Mess ad est l'opinion d'ascune, &c." And our au-
Thor here saith, that this opinion is good and rea-
sonable, for that such a bastard, by the law of holy church (3) is a
mulier.

Matrimonium subsequens legitimos facit quod aecerdotium non
quod successioem, propter consuetudinem regni quod se habet in
contrariem. Yet the canon law holdeth them legitimate quod suc-
cessionem. At a parliamant holden [q] anno 20 H. 3. for that to cer-
tificate upon the king's writ, that the sonne borne before marriage as
a bastard, was contra communem formam ecclesie, rogaverunt omnes
episcopi magnates ut consentirent, quod nati ante matrimonium es-
tent legitimi, sicut illi qui nati sunt post matrimonium quantum ad
successionem hereditarium, quia ecclesia, tales habet pro legitimis:
et omnes comites & barones unde voce responsorum, quod non tute
leges Anglie mutare, que hucuseque usitate sunt & approbate.

"Issint que il ad un colour d'entre, &c." Here it is to be ob-
erved, 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 said [r] before (1).

Sect. 401.

Mess en le case avant dit, lou le
bastard enter apres la mort le
pier, et le mulier luy ousta, et puis le
bastard disseisist le mulier, et ad issue,
et decie seise, et l'issue enter, donque
le mulier poit aver briefe d'entre sur
disseisiv envers l'issue del bastard,
et recouera la terre, &c. Et issint
poises voir le diversitie lou tiel bastard
continue la possession tout sa vie sans
interruption, et lou le mulier enter
et interrupt le possession de tiel bas-
tard, &c.

But 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 have a writ of entrer sur
disseisin against the issue of the
bastard, and shall recover the land, &c.
And so you may see a diversity
where such bastard continues the
possession all his life without in-
terruption, and where the mulier en-
treth and interrupts the possession
of such bastard, &c.

* maner not in L. and M. but in Rob.

(2) [See Note 180.] (1) [See Note 181.]
“Et le mulier luy ouste.” An estranger in the name of the mulier without his commandement cannot enter upon the bastard, for that the bastard may gains the estate and barre 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 than in the case [a] of the lord Audley: for there an estranger of his owne head could not enter in the name of him that right had to enter within the five yeares to avoid the fine. But in both those cases, first, if the mulier agree thereunto before the descent of the bastard; or secondly, if he that right had before the five yeares be past do assent thereunto, the claim is good, and shall avoid the estate both of the bastard and of the comusee, as it was holden in the lord Audley's case, quis omnis rathhabit te retrostrahitur, & mandato aquitaratur, and it standeth well with the words of the statute, so that they pursue their title, &c. by way of action or entry; and so is the booke in [b] 31 H. 8. to be intended.

But in the case of the bastard eigne, which is Littleton's case, gardein in socage, or gardein in chivalrie, may enter, for they are no strangers, as in another place is plainly shewed. If an infant make a seoffment in fee, an estranger of his owne head cannot enter [c] to the use of the infant, for the estate is voidable. But where an infant or a man of full age is disseised, an entré by a stranger of his owne head is good, and vesteth presently the estate in the infant, or other disseise. So it is if tenant for life make a seoffment in fee, an estranger may enter for a forfeiture in the name of him in the reversion, and thereby the estate shall be vested in him, et sic de similibus.

[245. b.] "Lou stel bastard continue stel possession sans interruption." If the mulier entret the bastard, and the bastard recovereth the land in an assise against the mulier, now is the interruption avoided; and if the bastard dieth seised, this shall barre the mulier.

If the bastard eigne after the decease of the father entret, 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 onely the profits of the land by way of seisure, and the bastard die, and his issue is upon his petition restored to the possession, for that the seisure was without cause, the mulier is barred for ever; for the possession of the king when he hath no cause of seisure shall be adjudged 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 actual possession in the mulier, and consequently the bastard eigne is foreclosed of any right for ever.

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 upon a petition be restored, for that the seisure was without cause, the mulier is not barred, for the bastard could never enter, and consequently could gain no estate in the land, but the possession of the king in that case shall be adjudged in the right of the mulier. And it is to be observed, that the bastard must enter in vacuum possessionem, and continue during his life, without interruption made by the mulier.

"Interupt
"Interrupt le possession dei bastard, &c." If the bastard invite, the mulier to see his house, and to see pictures, &c. or to dine with him, or to hawk, hunt, or sport with him, or such like upon the land descended, and the mulier commeth upon the land accordingly, this is no interruption, because he came in by the consent of the bastard, and therefore the coming upon the land can be no trespass; but if the mulier commeth upon the ground of his own head, and cutteth downe a tree, or diggeth the soil, or take any profit, these shall be interruptions; for rather than the bastard shall punish him in an action of trespass, the act shall amount in law to an entry, because he hath a right of entry. 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 entry; for albeit in these cases the mulier doth not use any express words of entry, yet these, and such like acts, doe without any words amount in law to an entry; for acts without words may make an entry, but words without an act (viz. entry into the land, &c.) cannot make an entry (all which interruptions are implied in the said &c.). More shall be said hereafter of interruptions in the chapter of Continuall Claime.

Sect. 402.

I TEM, si un enfant deins age ad tiel cause de entry en ascuns terres ou tenements sur un auter, que est seisie en fee, ou en fee tai le de mesme les terres ou tenements, si tiel home que est tielment seisie, morust de tiel estate seisie, et les terres descendont a son issue durant le temps que l'enfant est deins age, tiel discent ne tollera l'entry l'enfant, mes que il poit enter sur le issue que est eins per discent, &c. pur eeo que nut laches serra a adudge en un enfant deins age en tiel case.

ALSO, if an infant within age hath such cause to enter into any lands or tenements upon another, which is seised in fee, or in fee taille of the same lands or tenements, if such man who is so seised dieth of such estate seised, and the lands descend to his issue during the time that the infant is within age, such discent shall not take away the entry (2) of the infant, but that hee may enter upon the issue which is in by discent, for that no laches shall be adjudged in an infant within age in such a case.

"Si un enfant deins age ad cause d'enter." If a man seised of lands in fee die, his wife privement ensient with a son, and a stranger abate and die seised, and after the sonne is borne, hee shall bee bound by the discent, (1) because hee at the time of the discent had no right to enfer, and this is to be gathered upon these words of Littleton, ad cause d'enter, which at the time of the discent he hath not.

"Est eins per discent, &c." Here is implied any other heire, collaterall or lineall.

(1) [See Note 182.]
(2) [See Note 183.]
An infant is accounted in law (as hath beene often said,) [d] until he passeth the age of 21 yeares, and certaine privileges hee hath in respect of his infancy.

"Neul laches serra adjudged en le enfant deins age en tiel case."

And Littleton well added (en tiel case) that is, in case of descent, for in some other cases laches shall prejudice an infant. As laches shall be adjudged in an infant if he present not to a church within six moneths, for the law respecteth more the privilege of the church (that the cure bee served) than the privilege of infancy. And so the publike repose of the realm, concerning mens freeholds and inheritances, shall be preferred before the privilege of infancy, is case of a fine, where the time begins in the time of the ancestor. So non-claimes of a villaene of an infant by a yeare and a day, who hath fled into ancient demene, shall take away the seizure of the infant. And if an infant bring not an appeale of the death of his ancestor within a yeare and a day, he is barred of his appeale for ever, for the law respects more liberty and life than the privilege of infancy. And here it is to be observed, that Littleton puttesth his case, that an infant shall enter upon a descent, when a stranger dieth seised, but hee put it not so before, in the case of the bastard eigne. B. tenant in talle infeoffeth A. in fee, A. hath issue within age and dieth, B. abateth and dieth seised; the issue of A. being still within age, this descent shall binde [e] the infant, for the issue in talle is remitted: and the law doth more respect an ancient right in this case, than the privilege of an infant that had but a defeasible estate. And it is said [f] if the king die seised of lands, and the land descend to his successor, that this shall bind an infant, for that the privilege of an infant in this case holds not against the king (1).

ITEM, si le baron et sa feme, comme en droit la feme, ont title et droit d'enter en tenemens que un aulter ad en fee, ou en fee talle, et tiel tenant morust seise, &c. en tiel case l'entree le baron est tolle sur l'heire que est eins per descant. Men si le baron devie, donque la feme bien poit enter sur le issue que est eins per descant, pur cee que laches le baron ne turnera la feme ne ses heires en prejudice ne en dammage en tiel cas, mes que la feme et ses heires bien potent enter, tou tiel descant est eschue durant le coverture.

ALSO, if husband and wife, as in right of the wife, have title and right to enter into lands which another hath in fee, or in fee tyle, and such tenant dieth seised, &c. in such case the entry of the husband is taken away upon the heire which is in by descant. But if the husband die, then the wife may well enter upon the issue which is in by descant, for that no laches of the husband shall turn the wife or her heires to any prejudice nor losse in such case, but that the wife and her heires may well enter, where such descant is eschued during the coverture.

(1) [See Note 184.]
"S'il baron et femme, come en droit sa femme, ont titre et droits d'enterr, &c. et s'il tenans mortus esse a, &c."

These words are general, but are particularly to be understood, viz. when the wrong was done to the wife during the coverture; for if a femme 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, have 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 as well for that shee herselfe when shee was sole, might have entred and recontinued the possession, as also it shall be accounted her fally that shee would take such a husband which would not enter before the descent.

But there if the woman were within age at the time of her taking of husband, then the dying seised shall not after the decease of her husband, take away her entry; because no fally can bee accounted in her, for that shee was within age when shee tooke husband, and after coverture shee cannot enter without her husband; all which is implied in the said (Sc.)

"Laches le baron ne turnera la fem, &c. al prejudice, &c." Laches signifies in the common law, retchlessenesse, or negligence, et neglegentia semper habet infortium comitem. Here is a diversity to bee observed, that albeit regularly no laches shall be accounted in infants, or femme covertas, as is aforesaid, for not entry or clame to avoid discents, yet laches shall be accounted in them for no performance of a condition annexed to the state of the land. For if a femme be infeodded either before or after marriage, reserving a rent, and for default of payment a re-entrie; in that case, the laches of the baron shall disherit the wife for ever. And so it is [s] of an infant; his laches, for not performing of a condition annexed to a state, either made to his ancestor or to himselfe, shall barre him of the right of the land for ever.

If a man make a feodiment in fee to another reserving a rent, and if he pay not the rent within a moneth, that he shall double the rent, and the feeoffe 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 femme covert; and the reason and cause of this diversity is, that the infant is provided for by the statute, [e] non current usura contra aliquem infra etatem existente, &c. But that statute doth not extend to a femme covert, 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 usura.

* Sect. 404.

MES la court tient, lou tiel title est done al femme sole, que puis pret baron que n'entra pas, eius suffer un discent, &c. la auter est, car serra dit

BUT the court holdeth, where such title is given to a fem sole, who after taketh husband which doth not enter, but suffer a discent, &c. there

* This section is not in L. and M. nor Rob.
ITEM, si homo est de non sane memoria, quod est a dire en Latine, qui non est compos mentis, ad cause d'entre en aucun tels tenements, si tel discant, ut supra, solet esse en sa vie durant le temps que il fuit de non sane memoria, et puis devia, son heire bien poit extre sur ley que c'est per discant. Et en cest case poyes veier un cas, que l'heire poit enter, et uncere son ancetzer que avoit meeme le tite ne puisssoit enter. Car celuy que fuit hors de sa memorie al temps de tiel discant, s'il voille enter apres tiel discant, si action sur cee soit sue envers lui, il n'ad riens pur lui a pleder, ou de lui ayder, mes a dire, que il fuit de non sane memorie al temps de tiel discant, &c. Et a cee ne serra il recevra a dire, pur cee que nul home de pleine age serra recevra en aucun plee per la ley a * disabler le person demesne, mes le heire bien poit disabler le person son ancetzer pur son advantage: demesne en tiel cas, pur cee que nul laches poit entre adjudge per la ley en celuy que ad nul discretion en tiel case.

ALSO, if a man which is of non sane memory, that is to say in Latine, qui non est compos mentis, hath cause to enter into any such tenements, if such discant, ut supra, bee had in his life during the time that he was not of sound memorie, and after dieth, his heire may well enter upon him which is in by discant. 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 memorie at the time of such discant, if hee will enter after such a discant, if an action upon this be sued against him, he hath nothing to plead for himselfe, or to helpe him, but to say, that hee was not of sane memorie at the time of such discant, &c. And he shall not bee received to say this, for that no man of full age shall bee received 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 advantage in such case, for that no laches may bee adjudged by the law in him which hath no discretion in such case.

HERE Littleton explaineth a man of no sound memorie to be non compos mentis. Many times (as here it appeareth) the Latin word explaineth the true sense, and calleth him not amene, demene, furiose, lunaticus, fatue, stultus, or the like, for non compos mentis is most sure and legall (1).


* destulifer et, added L. and M. and Bob.
† demene—det heire, L. and M. and Bob.

(1) [See Note 185.]

Non compos mentis is of foure sorts; 1. Ideota, which from his nativitie, by a perpetuall infirmite, is non compos mentis. 2. Hee that by sicknesse, griefe, or other accident, wholly loseth his memorie and understanding. 3. A lunatique that hath sometime his understanding and sometime not, alicquando gaudet lucidis intervallis, and therefore he is called non compos mentis, so long as he hath not understanding. Lastly, hee that by his owne visious act for a time depriveth himselfe of his memorie and understanding, as he that is drunken. But that kind of non compos mentis shall give no privilege or benefit to him or to his heires. And a discent shall (1) take away the entrée of an ideot, albeit the want of understanding was perpetuall; for Littleton speakeith generally of a man of non sane memorie. So likewise if a man that becomes non compos mentis by accident, as is aforesaid, be diseased and suffer a discent, albeit he recover his memorie and understanding againe, yet hee shall never avoid the discent; and so it is à fortiori of one that hath lucida intervalla. As for a drunkard who is voluntarius demon, he hath (as hath beene said) no privilege thereby, but what hurt or ill soever he doth, his drunkenesse doth aggravate it: Omne crimen ebiertas & incendit, & detegit.

If an ideot make a feoffment in fee, he shall in pleading never avoid it by saying that hee was an ideot at the time of his feoffment, and so had beene from his nativitie. But upon an office found for the king, the king shall avoid the feoffment, for the benefit of the ideot, whose custodie the law giveth to the king.

So it is of a non compos mentis by accident, and of him qui gaudet lucidis intervallis, if an estate be made during his lunacie: for albeit the parties themselves cannot bee received to disable themselves, yet twelve men upon their oaths may finde the truth of the matter. But if any of them alien by fine or recoverie, this shall not onely binde himeselfe, but his heires also. (2) As amongst other things requisite to be knowne, these cases you shall finde at large in my Commentaries, whereunto, for brevitie, I referre the reader: upon all which booke there have beene foure severall opinions concerning the alienation, or other act of a man that is non compos mentis, &c. For, first, some are of opinion, that hee may avoid his owne act by entrée, or plea. Secondly, others are of opinion, that he may avoid it by writ, and not by plea. Thirdly, others, that he may avoid it either by plea, or by writ; and of this opinion is Fitzherbert in his Natura Brevisnum, ubi supra. And Littleton here is of opinion, that neither by plea nor by writ, nor otherwise, he himselfe shall avoid it, but his heire (in respect his ancestor was non compos mentis) shall avoid it by entrée, plea, or writ. And herewith the greatest authorities of our booke agree; and so was it resolved with Littleton in Beverley's case; [r] where it is said, that it is a maxim of the common law, that the partie shall not disable himselfe. But this holdeth only in civil causes; for in criminal causes, as felonie, &c. the act and wrong of a madman shall not bee 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 minde or discretion; and furiosus solo furor Frunitur, a madman is only punished.

(1) In all the editions except the first, the word not is here erroneously inserted. (2) [See Note 186.]
punished by his madness. And so it is of an infant, until he be of the age of fourteen, which in law is accounted the age of discretion.

"Et en cest case poyez veoir un case, &c." And though Littkeston saith (one case), yet other cases may be found to the same end. For if there be grandfather, father, and son, and the father disposses the grandfather, and make a feoffment in fee, without warrant, the grandfather dieth, albeit the right descend to the father, he cannot by this right descended enter against his own fee-offment; but if he die the sonne shall enter, and avoid the estate of the feoffee.

So if the grandfather be tenant in taille, and the father disposses him, us supra, mutatis mutandis.

If lands be given to two and to the heires of one of them, that hath the fee simple shall not have an action of waste upon the statute of Gloucester, against the joynetee for life, but his heire shall maintain an action of waste against him, upon the statute of Gloucester; so the heire shall maintaine that action which the ancestor could not.

Sect. 406.

AND if such a man of non same memoria make a feoffment, &c. hee himselfe cannot enter, nor have a writ called Dum non fuit compos mentis, &c. causas qui supra: but after his death his heire may well enter, or have the said 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 have a writ of Dum fuit infra etatem, &c.

"Fait feoffment, &c." Or any other like conveyance in pais; but fines and other assurances of record are not implied in this (&c.)

"Mesme la ley d'un enfant." This is true, as to the bringing of a Dum fuit infra etatem, &c. but without question the infant in that case might have entered, as it appeareth in the next Section (1).

"Briefe"

† le to L. and M. and Roh. The rest of this Section not in L. and M. nor Roh.

(1) See the observation of Mr. Dunning on this passage in his argument in the case of Zouch ex demis. Abbot and Hallett v. Parsons and Hallett, 3 Burr. 1794.

"Brevis Dum non fuit compositus mentis." This writ (as it appeareth by our author) lieth for the heire of him that was non compositus mentis, and not for himselfe; but a Dum fuit infra statutum lieth as well for the ancestor himself after his full age, as for his heire.

Sect. 407.

**ITEM, si jeco sue disceisse per un enfant deins age, lequel aliena a un auter en fise, et l’alienee deie seise et les tenements descendent a son heire, estant l’enfant deins age, mon entrie est tolle, &c.**

ALSO, if I be disseised by an infant within age, who alieneth to another in fee, and the alienee dieth seised, and the lands descend to his heire, being an infant within age, my entrie is taken away, &c. (1)

Sect. 408.

**MES si l’enfant deins age enter sur l’heire que est § eis per discent, come il bien poit, pur ceo que **mesme le discent fuit durant son nonage, donque jeco bien puisse enter sur le disceisor, pur ceo que per son entrie il ad debeat et anient le discent.**

BUT if the infant within age enter upon the heire which is in by descent, as he well may, for that the same descent was during his nonage, then I may well enter upon the disseisor, because by his entrie he hath defeated and taken away the descent.

HERE it appeareth, that the entrie of the infant is lawfull, and giveth advantage to the disseisee to enter also, because the descent, which was the impediment, is avoided. And it is to be observed, that if the descent be cast, the infant being within age, he may enter at any time, either within age, or after his full age.

And so it is if an infant make a feoffment, &c. he may enter either at any time after his full age, and so in both cases may his heire.

Sect. 409.

**ENmesme le manner est, lou jeco sue disceisse, et le disseisor fait feoffment en fee sur condition, et le feoffee morust de tiel estate seisse, jeco ne purroy ** my enter sur **l’heire le feoffee:**

IN the same manner it is, where I am disseised, and the disseisor make a feoffment in fee upon condition, and the feoffee die of such estate seised, I may not enter upon the heire of:

* disceisse not in Roh. but in L. and M.
† et added L. and M. and Roh.
‡ &c. not in L. and M. nor Roh.
§ eis—heire, L. and M. and Roh.

†† mesme not in L. and M. but in Roh.
¶ &c. added L. and M. and Roh.
** my not in L. and M. nor Roh.
†† Theire—la terre, L. and M. and Roh.

(1) [See Note 187.]
Of Discents.

Of the feoffee: but if the condition bee broken, so as for this cause the feoffee enter upon the heire, now I may well enter, for that when the feoffee or his heires enter for the condition broken, the discent is utterly defeated, &c.

The reason hereof is apparent, for cessante causd, cessat causd. Tenant in capite maketh a feoffment in fee to the use of the feoffee and his heires, untill the feoffee 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 feoffee pay the hundred pounds according to the limitation, the wardship is devestted, both for the body and the land, and so it is in case of a condition: for, as Littleton here saith, the discent, which is the cause of wardship, is utterly 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, as where the state was never lawfull, (as in the case of an infant,) and where the discent is affirmed for a time, the estate being lawfull, and being after defeated by matter ex post facto, by a title of re-entry.

Item, si jeco soy disseisie, et le disissor ad issue et enter en religion, per force de quel les tenements descendent a son issue, en est case jeco bien puisse enter sur l'issue, et encore la faite un discent. Mes pur ceo que tel discent vient al issue per fait le pier, sicillect, pur ceo que il enter en religion, &c. et le discent ne vient a luy pret de Dieu, sicillect, per mort, &c. son entre est congeable. Cur si jec arraigne un assise de novel disisien encore mon disisseur, coment que il peut enter en religion, ceo ne abatera mon briefe, mes mon briefe (ceo un obstant) estoyera en sa force, et mon recouvre vers luy sera bonne. Et per mesmo le reason le discent ne exige a son issue per son fait demene, ne tollera moy de mon entre, &c.

Also, if I be disseised, and the disissor hath issue and entroth into religion, by force whereof the lands descende to his issue, in this case I may well enter upon the issue, and yet there was a discent. But for that such discent commeth to the issue by the act of the father, sicillect, for that he entred into religion, &c. and the discent came not unto him by the act of God, (sicillect) by death, &c. my entry is congeable. For if I arraigne an assise of novel disseisin against my disissor, albeit he after enter into religion, this shall not abate my writ, but my writ (notwithstanding this) shall stand in his force, and my recovery against him shall bee good. And by the same reason the discent which commeth to his issue by his own act, shall not take from me my entry, &c.

† Vide the Sect. next preceding.
Dyer 15 Ec.
Ed. 394. 395.

(Ann. 6. 39a.)

[48.b.] (Ann. 76. b.)

† Et not in L. and M. nor Roh.

* non recovere not in L. and M. nor Roh.
ENTRE en religion, &c." Here is implied profession. This
discant shall not barre the entry of the disseesee, for that
the dissent commeth by the deed of the father, because he entred
into religion, wherein there is an excellent point worthy of observation;
for albeit the entry into religion make not the dissent, but the
profession, whereof you have read before, Sect. 200, yet here you
may learne by Littleton that the law respects the original act, and
that is, his entry into religion, which is his own act, whereupon
the profession followed; whereby the dissent happend; for Cujusque
rei potissima pars, principium est. And againe, Oriqo rei imputici
debet, whereof you shall make great use in reading of our booke.

* Here Littleton attributeth the cause of the dissent to his entry
into religion, which was his owne act, whereas a dissent doth not
take away an entry unless 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 work a wrong to a stranger, that
hath right, to barre him of his entrie. But it is said, that in the
case of the bastard eigne, and mulier huissone, such a dissent shall
bind the mulier, as before hath beeene said, and such an heire that
commeth in by such a dissent, shall have his age.

" Car si jeco arriagne un assise, &c." Nota, if a man be tenant
or defendendant in a reall or personall action, and hanging the suit the
tenant or defendendant entred into religion, by this the writ is not
abuted, because it is by his owne act. And so it is of a resiguation;
but otherwise it is of a deposition, or deprivation, because he
is expelled by judgment, and yet his offence, &c. was the cause
thereof; sed in præsumptione legis, judicium redditur in invitum.

" Moy de mon entry, &c." Here is implied, or any of my
heires.

ITEM, si jeco lesse a un home certaine terres pur terme de 20 ans,
et un auter moy disseisist, et oustaro le termor, et devie seisse, et les tenemments
discendant a son heire, jeco ne purroy enter; et uncore le lessee pur terme
derm bien puit enter, pur ceco que il per
son entry ne oustaro l'heire que est eins
per dissent de le frantkenement que est
ta luy discendus, mes solement *
claime d'aver les tenemments pur terme
derm, lequel n'est pas expulsion de
le frantkenement del heire que est
eins per dissent. Mes autrement est oui
mon

ALSO, if I let unto a man certaine lands for the term of
twenty yeares, and another disseiseth
me, and oust the termor, and die
seised, and the lands descend to his
heire, I may not enter; and yet the
lessee for yeares may well enter, becausethat by his entry hee doth not
ouste the heire who is in by dissent
of the freehold which is descended
unto him, but only claymeth to have
the lands for terme of yeares, which
is no expulsion from the freehold of
the heire who is in by dissent. But
otherwise

* claine not in L. and M. nor Rob.
† less not in L. and M. nor Rob.
Of Discents.

non tenant a termes de vie et disseis, causa patet, &c. || otherwise it is where my tenant for

"PUR termes de 20 ans." It is cleeere that a discents shall not
take away the entrée of a lessee for yeares, as our author
here saith, nor of a tenant by elegit, or tenant by statute merchant,
or such like, as have but a chattle and no freehold; and the reason
is, for that by their entry upon the heire by discents, they take no
freehold (which, as often hath bin observed, 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 inheri-
ance, so a discent of a freehold and inheritance cannot take away
the entry of him that hath but a chattle, for that no discent or dy-
ing seised can be of the same.

(2) A man seised of an adwosson in fee grants three avoyd-
ances one after another, and after the church becometh void,
and the grantor presents, and his clarke is admitted and instituted,
and after the church becomes void againe, the grantee may pre-
sent to the second avoysance, for that he was not put out of the
possession thereof; for as the lessor having the freehold and inheri-
tance cannot disese his lessee for years, having but a chattle, that
any discent may be cast to take away his entry (as Littleton here
saith); so in the said case the grantor hath the franktenement and
fee of the adwosson rightfully, so as he cannot make any usurpa-
tion, to gaine any estate, or to put the grantee so out of possession
as that he should not present, no more than the lessee for yeares in
this case, to enter. Also in respect of the privitie that is betweene
them, the usurpation of the grantor shall not put the grantee out
of possession for the two latter avoysances. And this was resolved
[6] by all the judges of the court of common pleas, which I my-
selfe heard and observed.

Sect. 412.

ITEM, il est dit que si home est
seise de tenements en fee per occu-
pation en temps de guerre, et est mo-
rust seise en temps de guerre, et les
tenements descendent a son heire, tel
discent ne oustera aucun home de son
entry ; et de cee home poit vier en un
pieux sur un briefe de ail, an. 7 E. 2.

ALSO, it is said, that if a man be
seised of lands in fee by occupa-
tion in time of warre, and thereof
dieth seised in the time of warre,
and the tenements descend to his
heire, such discent shall not out any
man of his entry; and of this a man
may see in a plea upon a writ of
aiei, 7 E. 2.

"PER occupation en temps de guerre."

First, it is necessarie to be knowne, what shall bee said
time of peace, tempus pacis ; and what shall be said tempus belli, (4 Inst. 128.)

sive


(1) [See Note 188.]
(2) [See Note 189.]
Of Discentis.

Sect. 412.

e sive guerre, time of warre. Tempus pacis est quando can-
cellaria & alia curia regis sunt aptera, quibus lex siete
cuiunque potest fieri consequit. And so it was adjudged in the case of
Roger Mortimer, and of Thomas earle of Lancaster. Utrum terrae
sit guerra necne, naturaliter debet judicari per recorda regii, &
eorum, qui curias regies per legem terrae custodiant, & gubernant,
sed non alio modo.

And therefore when the courts of justice be open, and the judges
and ministers of the same may by law protect men from wrong and
violence, and distribute justice to all, it is said to be time of peace.
So, when by invasion, insurrection, rebellions, or such like, the
peaceable course of justice is disturbed and stopped, so as the
courts of justice be as it were shut up, et silent leges inter arma,
then it is said to be time of warre. And the triall hereof is by
the records, and judges of the court of justice; for by them it
will appeare whether justice had her equall course of proceeding
at that time or no, and this shall not be tried by jury.

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.

Item tempore pacis, quod dicitur ad differentiam curiae ut fuer-
ynt tempore belli, quod idem est, quod tempore guerrino, quod
nihil differt a tempore juris, & injusti; est enim tempus injuste,
cum fuerunt oppressiones violentae, quibus resisti non potest &
disseasia injuste.

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 there-
fore in all reall actions, the expleas, or taking of the profits, are
layed tempore pacis, for if they were taken tempore belli, they are
not accounted of in law (1).

“Per occupation.” Occupation is a word of art, and signifieth a
putting out of a man’s freehold in time of warre; and it is all one
with a disseisin in time of peace, saving that it is not so dangerous
as it appeareth here by Littleton; and therefore the law gave a writ
in that case of occupavit, so called, by reason of that word in the
writ, in stead of disseisiuit, in the assise of novel disseisin, if the dis-
seisin had beene done in time of peace; whereby it appeareth, how
apthy both in this, and in all other places, Littleton thorow his
whole booke speaketh. But albeit occupatio, whereof Littleton here
speaketh, is only in said writ (2) and in none other, (that I
can finde or remember) yet hath it beene used commonly in
conveyances and leases, to limit, or make certaine precedent words,
as ad tunc in tenuriae & occupatione. But occupatio is applied to the
possesion, be it lawfull or unlawfull; it hath also crept into some
acts of parliament, as 4 H.7. cap. 19. 39 Eliz. cap. 1. and others;
and occupare is sometimes taken to conquer.

“Et de cego home poit vier en un plea sur brieve de aiell anno 7. E. 2.”
Hereby it appears, that ancient termes or yeares, after the exam-
ple of Littleton, are to bee cited and vouched for confirmation of
the law, albeit they were never printed: and that of those yeares,

(1) [See Note 190.]
(2) [See Note 191.]
Of Discents.

those especially of E. 1. H. 3. Ut. are worthy of the reading and observation; a great number of which I have seen and observed, which in mine opinion doe give a great light, not onely to the understanding and reason of the common law, (which Fitzerbert either saw not, or were by him omitted) but also to the true exposition of the ancient statutes made in those times. Yet mine advice is, that they be read in their time. For after our student is 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 judgements and resolutions are the surest, and therefore it is the best to season him with them in the beginning, both for the settling of his judgment, and for the retaining of them in memorie. Secondly, for that the latter are more facile and easier to be understood than the more ancient: but after the reading of them, then to reade these others before mentioned, and all the ancient authors that have 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 descens, so it is in case of presentation, for no usurpation in time of warre puttheth the right patron out of possession, albeit the incumbent come in by institution and induction: and time of warre doth not onely give privilege 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 puttheth not the right patron out of possession.

[250. a.]

Sect. 413.

ITEM, *que nul morant seisie (ou les teneaments viendront a un autre par succession) * tolle l'entre d'as- cess person, &c. + Come de prelates, abbots, priors, deanes, ou parson d'es- glise, || ou d'auters corps politike, &c. coment que ils furent xx. mo- rants seisie, et xx. successors, cee ne tolejammes aucun home de son entrie.§

Plus serra dit de discents en le pro- chein ¶ chapter.

A LSO, 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, priors, deanes, or of the parson of a church, or of other bodies politike, &c. albeit there were xx. dyings seised, and xx. successors, this shall not put any man from his entrie.

More shall be said of descents in the next chapter.

"PER succession." This in the common law is applied only to bodies politike, or corporate, which have succession perpetually, and not to natural men: as to a bishop and his successors, or to an abbot, deane, archdeacon, prebend, parson, &c. and their successors, and not to J. S. of any other natural body and his successors, but to him and his heirs. And the successor of any of these in the post, and the heire of the natural man is in the per; and succedere is derived of sub and cedere.

"Corps

\[\text{not in L. and M. nor Roh.}\]
\[\text{as added in L. and M. and Roh.}\]
\[\text{Coom—quer. L. and M. and Roh.}\]
\[\text{m d'auters corps politike, not in L. and M.}\]
\[\text{nor Roh.}\]
\[\text{§ &c. added L. and M. and Roh.}\]
\[\text{¶ prochein chapitre—chapitre de continuelle}\]
\[\text{clayme, L. and M. and Roh.}\]
"Corps politique, &c." This is a body to take in succession, framed, (as to that capacity) by policie, and thereupon it is called here by Littleton a body politike; and it is also called a corpora-
tion, or a body incorporate, because the persons are made into a
body, and are of capacity to take and grant, &c. And this body
politike, or incorporate, may commence, and be established three
manner of ways, viz. by prescription, by letters patents, or by act
of parliament. Every body politike, or corporate, is either ecclesi-
asticall or lay: ecclesiastical, either regular, as abbots, priors, &c.
or secular, as bishops, deanes, archdeaconys, parsons, vicars, &c.
lay, as mayor and communaltie, baylifes, and burgesses, &c. Also
every body politike, or corporate, is either elective, representative,
collative, or denative. And againe it is either sole, or aggregate of
many; as you may reade in the Third Part of my Commentaries.
And this body politike, or corporate, aggregate of many, is by the
civilians called collegium or universitas.
Of Continual Claim.

Chap. 7.

Of Continual Claim. (1)

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 tail, if hee which hath title to enter makes continual claim to the lands or tenements before the dying seised of him which holdeth the tenements, then albeit that such tenant dieth thereof seised, and the lands or tenements descend to his heire, yet may he who hath made such continual claim, or his heire, enter into the lands or tenements so descended, by reason of the continual claim made, notwithstanding the descent. As in case that a man bee disseised, and the disseisce makes continual claim to the tenements in the life of the disseisor, although that the disseisor dieth seised in fee, and the land descend to his heire, yet may the disseisce enter upon the possession of the heire, notwithstanding the descent.

HERE our Author first describeth what a continual claim is. It is called continuum clameum, because at the common law it must have beene made within every yeare and day, as Littleton here teacheth. And yet if hee that right hath, maketh his claim, and the ter-tenant dieth within the yeare and the day, this claim, though it bee but once made (as hath beeene said) shall preserve the entry of him that maketh the claim (1).

"Ad droit et title d'enter." And yet in some cases a continual claim may be made by him that hath right, and cannot enter.

If tenant for years, tenant by statute staple, merchant, or elegit, be ousted, and he in the reversion disseised, the lessor, or he in reversion, may enter to the intent to make his claim, and yet his entry as to take any profits, is not lawful during the term. And in the same manner, the lessor or he in the reversion in that case may enter to avoid a collaterall warranty, or the lessor in that case may recover in any assise. And so (as some have holden) may

\[ \frac{1}{4} \text{ per added L. and 31.} \]
\[ \text{as added L. and M.} \]

\[ \frac{1}{4} \&c. \text{ added in L. and M. and Rob.} \]

[250. b.]

(1) [See Note 192.]

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may the lessor enter in case of a lease for life, to this intent, to avoid a descent, or a warranty.

If the disseisee make continuall claime, and the disseissor die seisied within the yeare, his heire within age, and by office the king is intituled to the wardship, albeit the entry of the disseisee bee not lawfull, yet may he make continuall claime to avoid a descent, and so in the like.

"Uncore poiit celuy que fait tiel clayme ou son heire enter." This is to be understood in this manner: that if the father make claime, and the disseissor dieth, and then the father dieth, that his heire may enter, because the descent was cast in the father's time, and the right of entry which the father gained by his claime shall descend to his heire. But if the father make continuall claime, and dieth, and the sonne make no continuall claime, and within the yeare and day after the claime made by the father, the disseissor dieth, this shall take away the entrie of the sonne, for that the descent was cast in his time, and the claime made by the father shall not availle him that might have claimed himselfe. And of this opinion was Littleton himselfe in our booke, where heholdeth that no continuall claime can avoid a descent, unlesse it be made by him that hath title to enter, and in whose life the dying seisied was. See more of this matter hereafter, in this chapter, Sect. 416.

And as here Littleton putteth his case of the ancestor and heire, so it holdeth in all respects of the predecessor and successor.

Sect. 415.

E N mesme le maner est, si tenant a terme de vie alien en fée, celuy en le reversion ou celuy en le remainder poit enter sur l'aliene. Et si tiel aliene decev seisie de tiel estate sans continuall claime fait a les tenements, devant le morant seisie del aliene, et les tenements per cause del morant seisie del aliene descendont a son heire, donques ne poit celuy en le reversion ne celuy en le remainder enter. Mes si celuy en le reversion ou celuy en le remainder, que ad cause d'entre sur l'aliene, fait continuall claime a les tenements devant le morant seisie del aliene, donques tiel home poit enter apres la mort l'aliene, auzy bien come il puissoit en sa vie. §

* a son heire—al heire del aliene, L. and M. and Roh.
† si not in L. and M. nor Roh.
‡ puissoit en—poet a, L. and M. and Roh.
§ &c. L. and M.
Of Continuall Claiame.

By this it appeareth, that a continuall claiame may be made as well where the lands are in the hands of a feoffee, &c. by title, as in the hands of a disserior, abator, or intruder, by wrong, as before hath beene noted (1).

Sect. 416.

ITEM, si terre soit lesee a un home pur terme de sa vie, le remanider a un auteur a terme de vie, le remanider a la tierce en fee, si le tenant a terme de vie aliena a un auteur en fee, et celuy en le remanider pur terme de vie fait continuall claiame a la terre devant le morant seisie d'alienice, et puis l'alienice morust seisie,* et puis apres celuy en le remanider pur terme de vie morust devant aucune entrie fait per luy, en ceo cas celuy en le remanider en fee poit enter † sur heire l'alienice, per cause de continuall claiame fait per luy que avoit le remanider pur terme de sa vie, pur ceo que tel droit que il averoit d'entrie, ‡ alera et remanira a celuy en le remanider apres luy, entant que celuy en le remanider en fee § ne puissoit pas enter sur l'alienice en fee durant la vie celuy en le remanider pur terme de sa vie, et pur ceo ** que il ne puissoit adonques faire continuall claim. †† (Car nul poit faire continuall claim mes quant il ad title d'entrie, &c.)

ALIER a un auteur en fee." It is to be observed, that a forfeiture may be made by the alienation of a particular tenant, two manner of ways; either in pais, or by matter of record.

In pais, of lands and tenements which lie in livery (whereof Littleton intendeth his case) where a greater estate passeth by livery than the particular tenant may lawfully make, whereby the reversion or remainder is devested, as here in the example that Littleton putteth when tenant for life alieneth in fee, which must bee understood of a feoffment, fine, or recoverie by consent.

If tenant for life, and hee in the remainder for life in Littleton's case, hath joyned in a feoffment in fee, this had bee a forfeiture of

* &c. added L. and M. and Roh.
† &c. added L. and M. and Roh.
‡ see in L. and M. and Roh.
§ see added in L. and M. and Roh.
†† (Car nul poit faire continuall claim) not in L. and M. nor Roh.

(1) [See Note 104.]
of both their estates, because hee in the remainder is particula injuriæ. And so it is if hee in the remainder for life had entred, and diseised tenant for life, and made a feoiment in fee, this had beene a forfeiture of the right of his remainder (1).

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 advowson, rent, common, or of a reversion or remainder of land, by deed grant the same in fee, this is no forfeiture of their estates, for that nothing passes thereby, but that which lawfully may passe; and of that opinion is Littleton in our books.

But if tenant for life or yeares of land, the reversion or remainder being in the king, make a feoiment in fee, this is a forfeiture, and yet no reversion or remainder is divested out of the king; and the reason is, in respect of the solemnitie of the feoiment by livery, tending to the king's disherson (2).

By matter of record, and that by three manner of ways. First, by alienation. Secondly, by claiming a greater estate than he ought. Thirdly, by affirming the reversion or remainder to be in a stranger.

First, by alienation; and that of two sorts, viz. by alienation diverting, or not diverting, the reversion or remainder. Divesting, as by levying of a fine, or suffering a common recoverie of lands, whereby the reversion or remainder is divested: not diverting, as by levying of a fine in fee, of an advowson, rent, common, or any other thing that lieth in grant: and of this opinion is Littleton in our books*. And so note two diversities: first, between a grant by fine (which is of record) and a grant by deed in pais; and yet in this they both agree that the reversion or remainder in neither case is divested: 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 original.

Secondly, by claime; and that may be in two sorts, either ex presss or implied. Expresss, as if tenant for life will in court of record claime fee, or if lessee for yeares be ousted, and he will bring an assise ut de libero tenemento. Implied, as if in a writ of right brought against him he will take upon him to joyne the mise upon the meere right, which none but tenant in fee simple ought to doe. So if lessee for yeares doe lose in a præscr, and will bring a writ of error, for error in processe, this is a forfeiture (3).

Thirdly, by affirming the reversion or remainder to be in a stranger, and that either actively or passively. Actively, [252. a.] by five manner of ways. As first, if tenant for life pray in aid of a stranger, whereby he affirmes the reversion to be in him. Secondly, if he atturne to the grant of a stranger; and there note also a diversitie betwenee an attournement of record to a stranger, and an attournement in pais, for an attournement in pais worketh no forfeiture. Thirdly, if a stranger bring a writ of entrie in casu proviso, and suppose the reversion to be in him, if the tenant for life confess the action, this is a forfeiture. Fourthly, if tenant for life plead covinously, to the disherson of him in the reversion, this is a forfeiture.

(1) See the observations on feoiments introduced in the notes to the next chapter. (2) See ant. 233. b. note. (3) [See Note 195.]
forfeiture. Fifthly, if a stranger bring an action of waste against lessee for life, and he plead "nul voit fait," this is a forfeiture; or the like.

Passively, as if tenant for life accept a fine of a stranger, "sur叫声 de droit come ceo, &c." for hereby he affirmes of record the reversion to be in a stranger (1).

Littleton here speakes the forfeit of the forfeiture of an estate; and here it is to be known, that the right of a particular estate may be forfeited also, and that he that hath but a right of a remainder or reversion shall take benefit of the forfeiture. As if tenant for life be disseised, and hee levie a fine to the disseisor, he in the reversion or remainder shall presently enter upon the disseisor for the forfeiture. And so it is if the lessee after the disseiseish had levied a fine to a stranger, though to some respects partes finis nihil habuerunt, yet it is a forfeiture of his right.

Littleton here speaketh of an alienation in fee absolutely, but so it is if the lessee for life make a lease for any other man's life, or a gift in tail. If A be tenant for life, and make a lease to B for his life, and C dieth, and the lessee re-entrench, yet the forfeiture remaineth.

If tenant for life make a lease for life, or a gift in tail, or a feoffment in fee, upon condition, and entrench for the condition broken, yet the forfeiture remaineth. Littleton speaketh of an estate for life; so it is of tenant in taille apres possibilite, tenant by the courteous, tenant in dower, or of him that hath an estate to him and his heirs, during the life of L. S. &c., and so of tenant for years, tenant by statute merchant, statute staple, or elegit.

Littleton saith, that where the alienation in fee is made to another, which must be intended a stranger, for if it be made to him in reversion 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 in remainder may enter for the forfeiture of the first tenant for life, and that if the tenant for life in remainder make continuall claimke, and the alienee die seised, then may he in the remainder for life enter; and if he die before he do enter, then he in the remainder in fee shall enter, because he in the remainder in fee could not make any claim (2); and therefore the right of entrie, which tenant for life in remainder gained by his entrie (3), shall goe to him in the remainder in fee, in respect of the privitie of estate: and so it is of him in the reversion in fee in like case, for he is also privie in estate.

If two joyntenants be disseised, and the one of them make continuall claimke, and dieth, the survivor shall take benefit of his continuall claim in respect of the privitie of their estate. But if tenant for life make continuall claimke, this shall not give any benefit to him in the remainder, unless the disseisor died in the life of tenant for life, for the cause abovesaid, Sections 414.

If tenant in tail, the remainder in fee with warrantie, have judgement to recover in value, and dieth before execution without issue,

(1) [See Note 196.]
(2) i.e. during the life of him in the remainder for life.
(3) The word entry appears to be printed in this case by mistake, instead of the word claim, which the context seems to require.
issue, he in the remainder shall sue execution, for he hath right thereunto, and is privie in estate.

In the same manner, if a seigniore be granted by fine to one for life, the remainder in fee, the grantee for life dieth, he in the remainder shall have a per gus servititia, for he hath right to the remainder, and is privie in estate. Here also it appeareth, that none can make continuall claime, but he that hath right to enter.

Sect. 417.

Mes est a veier a toy (mon fîts) coment et en quel manner tiel continual claime sera fait: et eeo bien apprendre, trois choses sont a intender. La i. chose est, si home ad cause d'entre en aucuns terres ou te- nements que sont en divers villes deins un meame countie, s'il enter en un parcel de les terres ou tenements que sont en un ville, en nosme de tous ses terres ou tenements as queux il ad droit d'enter deins tous les villes de mesme le countie; * per tiel entrie il avera awy bone possession et seisin de touts terres ou tenemens dont il ad tille d'entrie, sicome il avoir enter en fait es chescun parcel: et eeo semble grand reason.

But it is to be seene of thee (my son) how and in what manner such continell claime shall be made: and to learene this wel, tres things are to be understood. The first thing is, if a man hath cause to enter into any lands or tenements in divers townes in one same countie, if he enter into one parcel of the lands or tenements which are in one town, 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 he shall have as good a possession and seisin of all the lands and tenements whereof the hath title of entrie, as if he had entred in deede into every parcel: and this seemeth great reason.

"Si home ad cause d'enter en aucuns terres ou tenemens, &c." It is not sufficient to tell one generally what he should doe, but to direct him how, and in what manner he shall doe it, as Littleton doth in this place. And here, the generall rules of our au- thor are to bee understood, that the entrie of a man, to re- continue his inheritance or freehold, must ensue his action [252. b.] for recoverie of the same. As if three men disseise mee severally of three severall 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 entred into, because each disseisor is a severall tenant of the freehold, and as I must have severall actions against them for the recoverie of the land, so mine entrie must be severall.

And so it is if one man disseise mee of three acres of ground, and Jetteth the same severally to three persons for their lives, &c. there the entrie upon 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 severally the said three acres to three pers- sons for yeares, there the entrie upon one of the lessees, in the name

* et added in L. and M. and Roh.
† tous—tiels, L. and M. and Roh.
‡ en fait not in L. and M. nor Roh.
name of all the three acres, shall recontinue and revest all the three acres in the disseisee, for that the disseisee might have had one assise against the disseisor, because he remained tenant of the freehold for all the three acres, and therefore one entrée shall serve for the whole.

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 mine entrée into one of them in the name of both is good: for that one assise might be brought against him for both disseisins.

But if I enfeoff one of one acre of ground upon condition, and at another time I enfeoff the same man of another acre in the same countie upon condition also, and both the conditions are broken, an entrée into one acre in the name of both is not sufficient, for that I have no right to the land, nor action to recover the same, but a bare title, and therefore several entries must be made into the same, in respect of the several conditions. But an entrée in one part of the land, in the name of all the land subject to one condition, is good, although the parcels be several, and in several townes. And so note a diversitie betweene several rights of entrée, and several titles of entrée, by force of a condition (1).

"Deins mésme la countie." For if the lands lye in several countyes there must be several actions, and consequently several entries, as hath beene said.

"En nosme de tout, &c." If one disseise me of two several acres in one countie, and I enter into one of them generally, without saying, In the name of both; this shall revest only that acre wherein entrée is made, as hath beene said; and that is proved by our booke, which say, that if I bring an assise of two acres, if I enter into one hanging the writ, albeit it shall revest that only acre, yet the writ shall abate.

"Dont il ad titiue d'entré." Here in a large sense, title of entrée is taken for a right of entrée.

[253. a.]

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 deliver seisin to the feoffor of parell 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 livery of seisin to him to whom such feoffment in such manner is made, and

(1) [See Note 197]
HISTORY is evident, but here is a diversity between a feoffment and an entry; for a man may make a feoffment of lands in another county, and make livery of seisin within the view, albeit he might peaceably enter and make actual livery; and so may he shew the recognitors in an assise the view of lands in another county; 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 invest, and another to devest), as hereafter shall be said in the Section next following.

"A multò fortiori." Or à minore ad majus, is an argument frequent in our author, and in our books, 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 antient right, as the worthier and more respected in law, which holdeth affirmatively, as our author here teacheth us.

The three, (Sc.) in this Section need no explication.

THE second thing to be understood 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 parell thereof for doubt of beating, or for doubt of mayming, or for doubt of death, if he goeth and approach

Lib. 3.  Cap. 7. Of Continuall Claime.  Sect. 419.

livery de seisin fait fait, n’avoit droit * en toute les terres ou tenements en
tous le vesilles, mes per cause de livery
de seisin fait de parcel de les terres ou
tenements en un ville : à multò fort-
tiori, il semble bone reason que quant
home ad title d’enter en les terres ou
tenements en diverses viles deins un
mesme county, devant aucun entry per
luy fait, que per l’entry fait per luy
en parcel de les terres en un ville, en
le nomme de toute les terres et te-
ments asqueux il ad title d’enter deins
mesme le countié, cee t vest un seisin
de toute en luy, et per tel entry il
ad possession et seisin en fait, sicome
il avoit enter en chescun parcel, &c.

and yet hee to whom such livery of
seisin was made hath no right in all
the lands or tenements in all the
townes, but by reason of the livery of
seisin made of parell of the lands or
tenements in one towne: à multò
fortiori, it seemeth good reason that
when a man hath title to enter into
the lands or tenements in divers
townes in one same county, before
entry by him made, that by the entry
made by him into parell 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 county,
this shall vest a seisin of all in him,
and by such entry he hath possession
and seisin in deed, as if he had entred
into every parell.

32 E. 3. 31.
38 Ass. 33.

(*) Vid. Sect. next following.

Vid. Sect. 438.

L e second chose est a entender, que
si home ad title d’enter en ascuns
terres ou tenements, s’il ne osast enter
en mesmes les terres ou tenements, ne
en ascun parcel de cee per doubt de
battery, ou per doubt de mayhem, ou
per doubt de mort, s’il alast et approch
auxy près les tenements comme il osast
pur

* en—a, L. and M. and Boh.
* vest—est, L. and M. and Boh.
Lib. 3.

Of Continuall Claiame.

par tiel doubt, et claime per parol les tenements estrc les soens, maintenant par tiel claime, il ad un possession et seis ne en les tenements, auxy bien comme s'il ust enter en fait, coment que il n'avon un que possession ou seisin de mesme les terres ou tenements devant le dit claime.

HERE is to be observed, that every doubt or feare is not sufficient, for it must concern the safety 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 spoiling of his goods, this is not sufficient, because hee may recover the same, or dammages to the value without any corporall hurt.

Again, if the feare do concern the person, yet it must not bee a vaine feare, but such as may befall a constant man; as if the adverse partie lie in wait in the way with weapons, or by words menace to beat, mayhem, or kill him that would enter; and so in pleading must he shew some just cause of feare, for feare of selfe is internall and secret. But in a speciall verdict, if the jurors doe finde that the disseissee did not enter for feare of corporall hurt, this is sufficient, and shall be intended that they had evidence to prove the same. Tullus enim debet esse mutus et cadere postes in virum constantem, et qui in se continent mortis periculum, et corporis cruciatum. Et nemo tenetur se infortuniiis et periculis exponere.

And it seemeth that feare of imprisonment is also sufficient, for such a feare sufficeth to avoid a bond or a deed; for the law hath a speciall regard to the safety and liberty of a man. And imprisonment is a corporall dammage, a restraint of liberty, and a kind of captivity. But see in the Second Part of the Institutes, IV. 2. cap. 49, a notable diversitie betweene a claime or an entry into land, and the avoidance of an act or deed for feare of battery.

"Per tiel claime il ad un possession et seisin, &c." Here is to be observed, that there be two manner of entries, viz. an entry in deed, and an entry in law. An entry in deed is sufficiently knowne. An entry 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 as well where the lands are in the hands of one by title as by wrong. And therefore upon such an entry in law an assise doth lie, as well as upon an entry in deed, and such an entry in law shall avoid a warranty, &c.

But here is a diversity to be observed betweene an entry in law and an entry in deed, for that a continuall claime of the disseissee being an entry in law shall vest the possession and seisin in him for his advantage, but not for his disadvantage. And therefore if the disseissee bring an assise, and hanging the assise he make continuall claime,

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clame, this shall not abate the assise, but he shall recover damages from the beginning; but otherwise it is of an entry in deed. See more of this matter after in this chapter, Sect. 422.

Sect. 420.

ET que la ley est tiel, il est bien prove per un plee d'un assise en le liver d'assise, an. 38 E. 3. p. *32, le tenor de quel ensuite en tiel form. En le county de Dorset, devant les justices, trove fuit per verdict d'assise, que le plaintife que avoir droit per discent de heritage d'acer les tenemts mis en plaint, al temps del morant son anceser fuit demurant en le ville ou les tenemnts furent, et per parolx clame les tenemnts entre ses vicimes, mes pur doub de mort il n'osa approcher les tenemnts, mes port l'assise, et sur cest matter trove, agard fuit que il recovera, &c.

AND that the law is so, it is well proved 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 county of Dorset, before the justices, it was found by verdict of assise, that the plaintiff which had right by discent of inheritance to have the tenements put in plaint, 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 upon this matter found, it was awarded that he should recover, &c.

HERE it appeareth that our booke cases are the best proofs what the law is, Argumentum ab authoritate est fortissimum in lege. And for proofs of the law in this particular case, Littleton here citeth a case in 38 E. 3. but it is misprinted, for the original, according to the truth, is in the Booke of Assises, 38 E. 3. p. 23, and not plactio 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 private opinion, testi meipsae. More shall be said of the matter implied in this Section in the next following.

Sect. 421.

A tierce chose est a entenier deins quel temps et per quel temps le clame que est dit continuall clame servera et aidera celuy que fist le clame, et ses huires. Et quant a cee est ascavoir, que celuy que ad title d'enter, quant il voit faire son clame, si il osast approcher la terre, donques il covient

THE third thing is to know within what time and by what time the claim which is said continuall claim shall serve and aid him that maketh the clame, and his heires. And as to this it is to be understood, that hee which hath title to enter, when he will make his clame, if hee dare

• p. 32, not in L. and M. nor Rob.
† &c. added L. and M. and Rob.

† et per quel temps not in L. and M. nor Rob.
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covient aler a la terre, ou a parcel de ceo, * et faire son claime; et s'il n'osast approcher la terre pur doubt ou parvur de batterie, ou mayhem, ou mort, donques covient a luy d'aler et approcher auxyprés comme il osast oes la terre, ou parcel de ceo, † a faire son claime.

dare approach the land, then he ought to goe to the land, or to parcell of it, and make his claime; and if hee dare not approach the land for doubt or feare of beating, or maiming, or death, then ough hee to goe and approch as neere as hee dare towards the land, or parcell of it, to make his claime.

"COVIENT a luy d'aler et approcher auxyprés, &c." By this it should seeme, that by the authority 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 he 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 author mentioneth, in him that makes the continuall claime, and then he that makes the continu-

[254. b.] all claime ought to bee within the view of the land; and therefore the authoritie of this booke, as it is commonly conceived, is not against the opinion of our author in the point aforesaid. But then it is further objected, 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 claime * ought to go 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. To this this it is answered, that where a continuall claime shall devest any estate in any other person in any lands or tenements, thare, 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 devest any estate, but to bring him that maketh it into actual possession, there a claime within the view sufficeth; as upon a descent, the heire having the freehold in law may claime land within the view to bring himselfe into actual possession; and in that sense is the opinion of Hull and the court to be intended. Et sic de similitu. But yet the entry into some parcell in the name of the residue is the surest way (1).

Sect. 422.

ENT si son adversaire que occupia le terre, morust seisie en fee, ou en fee taiie, deins l'an et le jour apres tier claim, per que les tenements descendont a son fts come heire a luy, encore poit celuy que fist le claime entrer sur le possession le heire, † &c.

AND if his adversary who occupieth the land, dieth seised in fee, or in fee taiie, within the yeare and a day after such claime, whereby the lands descend to his sonne as heire to him, yet may hee which make the claime enter upon the possession of the heire, &c.

"DEINS

* a added in L. and M. and Rob.
† &c. not in L. and M. nor Rob.
1—et, L. and M. and Rgh.

(1) [See Note 198.]
"DEINS l'an et le jour." It is to be observed, that the law in many cases hath limited a yeare and a day to be a legal and convenient time for many purposes. As at the common law, upon a fine or final judgement given in a writ of right, the party grieved had a yeare and a day to make his claim. So the wife or heiress 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 privileged. If a man be wounded or poysoned, &c. and dieth thereafter of yeare and the day, it is felony. By the ancient law if the seoffice of a disseisor had continued a yeare and a day, the entry of the disseisee for his negligence had beene taken away. After judgement given in a reall action, the plaintiff within the yeare and the day may have a habere facias seisinam, and in an action of debt, &c. a capiatus, fieri facias, or a levare facias. A protection shall be allowed but for a yeare and a day, and no longer, and in many other cases.

But this time of a yeare and a day in case of continuall claimes is, since our author wrote, altered by the said statute of 32 H. 8. ca. 33, as before it appeareth.

Sect. 423.

But in this case after the yeare and the day that such claime 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 entrée shall not be taken away by such descent, &c. it behoveth 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 over, that is to say, to make a claime within everie yeare and day next after everie claime made during the life of his adversarie, and then at what time soever

* si nullus altera claime fuit, added in L. and M. and Roh.
+ a added in L. and M. and Roh.
† fuit not in L. and M. nor Roh.
‡ fuit not in L. and M. nor Roh.
§ d'esse added in L. and M. and Roh.

fait est plus communement prise et nomme Continuall Claime de luy que fust le claime.

soever his adversarie dieth seised, his entrie shall not be taken away by any dissent. And such claims in such manner made, is most commonly taken and named Continuall Claime of him which maketh the claime, &c.

It is to be observed, that the yeare and the day shall bee account
ed, as the day whereon the claime was made shall be accounted one: as for example, if the claime were made 2. die Martii, that day shall be accounted for one; for Littleton saith in the Section next before (after the claime made) and then the yeare must end the first day of March, and the day after is the second day of March.

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.


Sect. 424.

MES encore en le cas autrement,
[255. b.] lors son adversarie morust
deins l'an et la jour pro-
cheine apres le * claime,
cest en ley un continuall claime, en-
tant que l'adversarie deins l'an et le jour procheine apres mesme la claime morust. Car il ne bonnege a cely que fust son claime de faire aucun autre claime, mes a quel temps que il † voit deins mesme l'an et jour, &c.

BUT yet in the case aforesaid, where his adversarie dieth within the yeare and the day next after the claime, this is in law a continuall claime, inasmuch as his adversarie within the yeare 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.

This is evident.

Sect. 425.

ITEM, si l'adversarie soit disseisie
deins l'an et le jour apres tiel claime, et le disseisor ent morust seiseis deins l'an et le jour, &c. tiel morant seise ne griecra my celuy que fust le claime, mes que il poit enter, &c. Car queceunque soit que morust seiseis deins l'an et le jour procheine apres tiel claime fait, cee ne griecra my celuy que fist le claime, mes que il poit enter,

* primer added L. and M. and Roh.
† voit not in L. and M. nor Roh.
enter &c. comen que fuéront plusors morant seisie, et plusors discents deins mesme l'an et le jour, &c. shall not hurt him that made the claime, but that he may enter, &c. albeit there were many dying seised, and many discents within the same yeare and day, &c.

HERE it appeareth, that the continuall claime doth not only ex- tend to the first disseeor, in whose possession it was made, but to any other disseeor that dieth seised within the yeare and day after the continuall claime made. And whereas our author speaketh of a second disseeor, &c. herein is likewise implied not only abators and intrudors, but the feoffees or donees of the disseeors, abators, or intrudors, and any other feoffee or donee immediate or mediate, dye- seised within the yeare and day, of such continuall claime made.

Sect. 426.

ITEM, si home soit disseeisie, et le disseeor morust seisie deins l'an et le jour prochein apres le disseeisin fait, per que les tenements descendont a son heire, en cest case l'entrie le dis- seeisce est toll, car l'an et le jour que aidroit le disseeise en tiel case,* ne serra pris de temps de title d'entre a luy accrue, mes tanssolement de temps del clame per luy fait en le manner avant dit. Et pur cel cause il serroit bone pur tel disseeise pur faire son clame † en auxy breve temps que il puissoit apres le disseeisin, &c.

ALSO, if a man be disseised, and the disseeor dieth seised with- in the yeare and day next after the disseeisin made, whereby the tene- ments descende to his heire, in this case the entrie of the disseeise is taken away, for the yeare and day which should aid the disseeise in such case shall not bee taken from the time of title of en- trie accrued unto him, but only from the time of the clame made by him in manner aforesaid. And for this cause it shall be good for such dis- seeise to make his clame in as short time as he can after the disseeisin, &c.

THIS in case of a disseeor is now holpen by the statute made since Littleton wrote, as hath beene said; for if the disseeor die seised within five yeares after the disseeisin, though there be no continuall claime made, it shall not take away the entry of the dis- seeise, but after the five yeares there must be such continuall claime as was at the common law: but that statute extendeth not to any feoffee or donee of the disseeor immediate or mediate, but they re- maine still at the common law, as hath beene said.

* &c. added L. and M.
† &c. added L. and M.

Sect.
Of Continuall Clainme. Sect. 427—429.

Sect. 427.

ITEM, si tiel disseisor occupia la terre per x\textsuperscript{i} ans, ou per \textsuperscript{1} plusors ans, sans ascun claime fait per le disseise, \&e. \& le disseise per petit space devensit le mort del disseisor fuit un claime en le forme avanddit, si insint fortunasti que deins l'an et le jour apres tiel claime le disseisor morrit, \&c. l'entrie le disseise est congeable, \&c. Et pur ceo il serroit bone pur tiel home que ne fust claime, que ad bone title d'entrie, \| quant il met que son adversarie gist languishing, de faire son claime, \&c.

THIS is evident enough, and in respect of that which hath beene said, needeth not to be explained.

Sect. 428.

ITEM, sicome est dit en les cases mises, lou home ad title d'entre per cause d'un disseisin, \&c. meeme la ley est lou home ad droit d'entre per cause de ascun auter title, \&c.

HERE title is taken in his large sense to include a right.

"Ascun auter title, \&c." Here is implied abatours or intruders, and not only their disseisors, but the feoffees or donees of disseisors, abatours or intruders, or any other so long as the entrie is congeable.

Sect. 429.

ITEM, de les dites\* presidents poies scavir (mon fits) deux choses. Un est, lou home ad title d'entre sur un tenant en le taile, s'il fust un tiel claime a la terre, donques est l'estate taile defat, car cel claime est come entre fait per luy, et est de mesme l'effect en ley.

ALSO, of the said foresaying thou mayst know (my sonne) two things. One is, where a man hath title to enter upon a tenant in taile, if he maketh such a claime to the land, then is the estate taile defeated, for this claime is as an entrie made

\^ plus added L. and M.
\$ not in L. and M.
\* dites precedents L. and M.

ALSO, if such disseisor occupieth the lands fortie years, or more yeares, without any claime made by the disseise, \&c. and the disseise a little before the death of the disseisor makes a claime in the forme aforesaid, if so it fortuneth that within the year and the day after such claime the disseisor die, \&c. the entrie of the disseise 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 hee hearth that his adversarie lieth languishing, to make his claime, \&c.
Of Continuall Claime.

made by him, and is of the same effect in law as if he had bin upon the same tenements, and had entred into the same, as before is said. And then when the tenant in tailie immediately after such-claime continues 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 original, and this agreeth with the right sense of Littleton.

And here it appeareth, that a continual claime, which is an entrice in law, is as strong as an entrice in deed.

"Title de entrice." Here title de entrice is taken in the large sense for right of entrice.

Sect. 430.

Le second chose est, que auxy sovent que il que ad droit d'entre fait tiel claime, \* \* et cee nient contraicteant son adversary continua son occupation, \$ auxy sovent l'adversary fait tort et disseisin a celuy que fist le claime. Et pur cel cause auxy sovent poit celuy que fist || meme le claime par chacun tiel tort et disseisin fait a luy, aver un briefe de trespasse, \† Quare clausum fregit, \&c. et recovera ses damages, \&c.

THE second thing is, that as often as he which hath right of entrice maketh such claime, and this notwithstanding his adversary continue his occupation, so often the adversary doth wrong and disseisin to him which made the claime. And for this cause so often may he which makes the same claime for every such wrong and disseisin done unto him, have a writ of trespasse, Quare clausum fregit, \&c. and recover his damages, \&c.

HEREBY also it appeareth, that an entrice in law is equivalent to an entry in deed.

"Avera breve de trespasse, quare clausum fregit, et recovera ses damages." The disseisee shall have an action of trespass against the disseisor, and recover his damages for the first entry without any regresse, but after regresse he may have an action of trespass with a continuando, and recover as well for all the meanes occupation as for the first entry. And here note, that Littleton doth here include costs within dammages.

† Et not in L. and M. nor Roh.  
‡ et cœ—\&c. L. and M. and Roh.  
§ \&c. added L. and M. and Roh.  
∥ meme not in L. and M. nor Roh.  
\† Quare clausum fregit, \&c. et recovera ses damages, \&c. ou il poit aver un briefe, (the beginning of the next Section) not in L. and M. nor Roh. nor in MSS. before mentioned. It may be here observed, that the older copies of Littleton are not divided into Sections, which seem to have been first injudiciously marked by West in the edition 1883, though his divisions have been since retained for the convenience of citation.

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Of Continuall Claime.

Sect. 431.

O. R he may have a writ upon the statute of R. 2. made in the fifth yeare of his reigne, supposing by his writ that his adversarie had entered into the lands or tenements of him that made the claime, where his entry was not given by the law, &c. and by this action he shall recover his dammages, &c. And if the case were such, that the adversarie occupied the tenements with force and arms, or with a multitude of people at the time of such claim, &c. immediately after the same claim may hee which made the claim for every such act have a writ of forcible entry, and shall recover his treble dammages, &c. (1)

This is the statute of 5 R. 2. cap. 7.

(Doc. Fls. 331.)
37 H. 6. 33.
34 H. 6. 36.
13 H. 7. 15.
10 H. 7. 27.
 withdrawals.

"Per tield action il recovera ses dammages." This is to be understood, that he shall recover dammages for the first torcious entry, but not for the meane profits in this action, though he made a regresse. And here note, that also he shall recover his costs of suit, expensae litis, which Littleton doth include within these words (dammages, &c).

"Dammages." Dama in the common law hath a speciall signification for the recompence that is given by the jury to the plaintifie or defendant, for the wrong the defendant hath done unto him (2).

"Multitude." One or more may commit a force, three or more may commit an unlawfull assembly, a riot or a rout. A multitude here spoken of (as some have said) must be ten or more. Multitudinem decem faciant. And so (say they) it is said de gregg hominum. But I could never read it restrained by the common law to any certaine number, but left to the discretion of the judges (3).

(1) [See Note 199.]
(2) Some observations on the progress of our law, with respect to dammages, costs, and mesne profits, are to be found in Note 1.
(3) [See Note 200.]

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"Un breve de forcible entrée, et recouvrera ses treble dammages." This writ is grounded upon the statute of 8 H. 6. and lieth either where one entretake with force, or where he entretake peaceably and detaineth it with force, or where he entretake by force and detaineth it by force. And in this action without any regresse the plaintiff shall recover treble dammages, as well for the same occupation as for the first entry by force of the statute. And albeit he shall recover treble dammages, yet shall he recover 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 usually borne, or if he doe use violence, and threat to the terror of another. And if three or foure goe to make a forcible entry, albeit one alone use the violence, all are guilty of force. If the master commeth with a greater number of servants than usually attend on him it is a forcible entrée.

It is to be understood, that there is a force implied in law, as every trespass and rescous and disseisin impilth a force, and is vi et armis; and there is an actual force, as with weapons, number of persons, &c. and when an entry is made with such actual force an action doth lie upon the said statute (1). See before more of force and armes, Sect. 240.

Sect. 432.

ITEM, * si il est a veir, si le serv- vant d’un home que ad title d’en- ter, poit per le commandement son master faire continuall claime pur son master ou non.

Also, it is to be seene, if the servant 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.

Sect. 433.

ET il semble que en ascuns cases il poit cee faire ; car s’il per son commandement vient a ascun parcel de la terre, et la fait claime, &c. en le nosme son master, cest claime est assets bone pur son master, pur cee que il fait tout cee que son master covient faire

AND it seemeth that in some cases he may doe this: for if he by his commandement commeth to any parcel 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

* 1 —- icy, L. and M. and Roh.

(1) [See Note 201.]
his master should or ought to do in such case, &c. Also if the master saith to his servant, that he dare not come to the land, nor to any part or of it, to make his claim, &c. and that he dare approach no nearer to the land than to such a place called Dale, and command his servant to go to the same place of Dale, and there make a claim for him, &c. if the servant doth this, &c. this also seemeth a good claim for his master, as if his master were there in his proper person, for that the servant did all that which his master durst and ought to do by the law in such a case, &c.

Here it appeareth that where the servant doth all that which he is commanded, and which his master ought to do, there it is as sufficient as if his master did it himself; for the rule is, *Qui seriat illum facit, hic se ipsum facere videtur.*

*"Per commandement."* If an infant or any man of full age have any right of entree into any lands, any stranger in the name and to the use of the infant or man of full age may enter into the lands, and this regularly shall vest the lands in them without any commandment, precedent, or agreement subsequent. (*) But if a disseisnor levy a fine, with proclamation according to the statute, an stranger without a commandment precedent, or an agreement subsequent within the five yeares cannot enter in the name of the disseissee to avoid the fine. And that resolution was grounded upon the construction of the statute of 4 H. 7. cap. 24. But an assent subsequent within the five yeares should be sufficient. *Omnis enim ruhiabitio retrorahitur, et mandato aequatur,* as hath beene said.

*"Auxy si le master dit a son servent que il ne osast, &c."* Here it appeareth, that where the servant pursueth the commandement of his master, and doth all that which his master durst and ought to do by the law, this is sufficient. And although the master feareth more than the servant, or admit that the servant hath no fear at all, yet if he goeth as farre as his master durst, and as he commanded, it is sufficient. And this is implied in this Section.

† on devoir faire not in L. and M. nor Roh.
‡ Auxy not in L. and M. nor Roh.
§ son added in L. and M. and Roh.
ALSO, if a man be so languishing, or so decrepit, that he cannot by any meanes come to the land, nor to any parcell of it, or if there bee a reclusse, which may not by reason of his order goe out of his house, if such manner of person command his servant to goe and make claim for him, and such servant 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 servant commeth as nere to the land as he dareth for such doubt, and maketh the claim, &c., for his master, it seemeth that such claim 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 sick, decrepit, or reclusse, cannot finde any servant which dare go to the land, or to any parcell of it, to make the claim for him, &c.

REGULARLY it is true, that where a man doth lesse than the commandement or authority committed unto him, there (the commandement or authority being not pursued) the act is void. And where a man doth that which he is authorised to doe and more, there it is good for that which is warranteed, and void for the rest; yet both these rules have divers exceptions and limitations (1).

For the first, Littleton here putteth the case where a servant doth lesse than he is commanded, and yet it sufficeth, for that Impotentia excusat legem; for seeing the master cannot, and the servant dare not, enter into the land, it sufficeth that he come as nere to the land as he dare.

If a man makes a letter of attorney to deliver seisin to I. S. upon condition, and the attorney delivereth it absolute, this is void: and so some hold if the warrant bee absolute, and hee delivereth seisin upon condition, the littery is void.

"Pur battery, mayhem, ou mort." See the Second Part of the Institutes, W. 2. cap. 49, a diversity between the making of an entry or claim, and the avoydance of an act or deed.

1. [See Note 205.]

\[\textit{Auterment}\]

\[\textit{Ant. El. 4. b.}\]

\[\textit{Hob. 164.}\]

\[\textit{1. Lec. 259.}\]

\[\textit{H. 4. 3.}\]

\[\textit{11 Ann. 26.}\]

\[\textit{25 Ann. 39.}\]

\[\textit{Perk. 39. b.}\]

\[\textit{No. 350.}\]

\[\textit{See before Sect. 410.}\]

\[\textit{2 Inst. 483.}\]

\[\textit{Ant. 403. b.}\]

\[\textit{† parcel not in L. and M. nor Roh.}\]

\[\textit{§ &c. not in L. and M. nor Roh.}\]

\[\textit{‡ &c. added in L. and M. and Roh.}\]

\[\textit{§ de not in L. and M.}\]

\[\textit{§ ne—ou, L. and M. and Roh.}\]

\[\textit{† a added in L. and M. and Roh.}\]
Of Continuall Clame.  

“Auterment le master serroit en tresgrand mischiefe.” Argumentum ab inconvenienti est validum in lege, quia lex non permitit aliquod inconveniens. And as hath beene often observed before, Nihil quod est inconvenient est licitum.

“Recluse.” Reclusus, Heremita, seu Anchorita, so called by the order of his religion; he is so mured or shut up, quod solus semper sit, et in claustra suo sedet; and can never come out of his place. Scorsim enim it extra conversationem civilem hoc professionis genus semper habitat. Note here, albeit the recluse or anchorite be shut up himselfe, so as he by his order is not to come out in person, yet to avoid a dissent he must command one to make clame, and such a recluse shall always appeare by attorney in such cases where others must appeare in proper person. Impotentia enim excusat legem.

Mes si le master de tiel servant soit de bone sone, et poit et soast bien aler a les tenements, ou a parcel de cee, de faire son clame, Sc. si tiel master commanda son servant d’aler a ascun parcel de la terre a faire clame pur lui, il et quant le servant est en alant de faire le commandement de son master, il oye per le voy tielce choses que il ne oast veneric a ascun parcel de la terre pur faire le clame pur son master, et pur cel cause il vient auxy pres la terre come il oast pur doubt de mort, et la fait clame pur son master, et en le noeme de son master, Sc. il semble que le doubt en le ley en tiel case serroit, si tiel clame availera son master ou [259. a.] nemy, pur cee que le servant ne fust tout cee que son master al temps de son commandement oast faire, Sc. Queere.

But if the master of such servant bee in good health, and can and dare well goe to the lands, or to parcell of it, to make his clame, &c. if such master command his servant to goe to any parcell of the land to make clame for him, and when the servant 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 clame for his master, and therefore he commeth as neere to the land as he dare for doubt of death, and there makes clame 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 clame shall availle his master or not, for that the servant did not all that which his master at the time of his commandement durst have done, &c. Queere.

This continuall clame is void, for that the servant doth lesse than that which is expressly commanded, and there is no impotencie or feare in the master.

1 &c. added in L. and M. and Roh.

Sect. 436.

ITEM, ascuns ont dit, que lou home est en prison et est disseisie, et le disseisor morust seisse durant le temps que le disseisie est en prison, per que les tenements descendent al heire del disseisor, ils ont dit, que ceo ne noicera my le disseisie que est en prison, meue que il bien poit enter, nient obstant tiel discisent, pur ceo que il ne puissoit faire continual claimie quant il fuit en prison.

ALSO, some have said, that where a man is in prison and is disseised, and the disseisor dieth seised during the time that the disseisie is in prison, whereby the tenements descend to the heire of the disseisor, they have said, that this shall not hurt the disseisie which is in prison, but that he well may enter, notwithstanding such a disseisent, because hee could not make continual claimie when he was in prison.

**QUANT home est en prison et est disseisie?** For if hee bee disseised when he is at large, and the disseisent is cast during the time of his imprisonment, this disseisent shall binde him.

Excusas tur autem quis quod clameum suum non asplanetur, si tempore atigit in prasonia detentus fuerit, ita quod venire non posset, nec mittere, quia nulli vertitur in dubium, et ubi cadem ratio et idem jus erit, idci videtur quod excusari debet quis si per vic maiores, vel per fraudem, extra prisonam detentus fuerit, ita quod venire non posset nec mittre, dum tamen hoc per certa judicicia probari poterit.

**Pur ceo que il ne poit faire continual claimie quant il fuit en prison.** Here is to bee observed by the authoritie of Littleton, that he is not enforced in this case by law to doe it by his servant or any other by his warrant or commandement, for things done by deputie are seldom well done, but everie man will see his owne business 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 intendment of law he is kept (as it is presumed in law) without intelligence of things abroad, and also that he hath not libertie to goe at large to make entrie or claimie, or seeke counsell. And so note a diversitie betweene a recluse who might have intelligence, and a man in prison.

*Sect. 437.

MES l'opinion de tous les justices, p. 11 H. 7. fuit, que si le disseisin soit avant l'enprisonement, comest que le morant seise soit il estant en le prison, son entrie est tolle.

BUT the opinion of all the justices, p. 11 H. 7. was, that if the disseisin be before the imprisonment, although the dying seised be he being in the prison, his entrie is taken away.

THIS

* This Section is not in L. and M. nor Roh. nor in the edit. 1577, which is esteemed more correct than the common copies.
**Lib. 3. Of Continuall Clame.**

THIS is of a new addition, and mistaken, for there is no such opinion, p. 11 H. 7. but it is, 9 H. 7. fol. 24. b.

**T** auxy, si tiel que est en prison soit utlage in action de debt ou trespass, on en appeale de robberie, &c. il reversera tiel utlagarie *envers lay pronounce, &c.

**A** ND also, if hee which is in prison be outlawed in an action of debt or trespass, or in an appeale of robberie, &c. hee shall reverse this outlawry pronounced against him &c.

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[259. b.] "IL reversera tiel utlagarie." Note, the original is, reversera tiel utlagarie per briefe de error (1), and so it would bee amended: for outlawries may bee reversed two manner of wayes, viz. by plea, or by writ of error. By plea, when the defendant commeth in upon the capias utlagatum, &c. hee may by plea reverse the same for matters apparent, as in respect of a supersedeas, omission of processe, variance, or other matter apparent in the record: and yet in these cases some hold, that in another terme the defendant is driven to his writ of error.

But for any matters in fact, as death, imprisonment, service of the king, &c. he is driven to his writ of error, unless be in case of felonie, and there in favorem vice he may plead it.

But albeit imprisonment be a good cause to reverse an outlawrie, yet it must be by processe of law in invitium, and not by consent or covin, for such imprisonment shall not avoid the outlawrie, because upon the matter it is his owne act.

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**Sect. 438.**

**A**UXY, si un recoverie soit † per default vers tiel que est en prison, il avoidera le judgement per briefe de error, pur cee que il fuit en prison al temps de le default fait, &c. Et pur cee que tiels matters de record ne yo-neront cley qu' il en prison, mes que ils servront reverse, &c. à multô forti-riori, il semble que un matter en faite, s'illecet, tiel discent en quant il fuit en prison ne luy noyera, &c. special-ment

A LSO, if a recovery bee by default against such a one as is in prison, he shall avoid the judgement 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 shall not hurt him which is in prison, but that they shall bee reversed, &c. à multô fortiori, it seemeth that a matter in fact, syllicet, such discent had when hee was in prison shall

* per brief d'erreur, &c. pur ces qu'il fuit en prison al temps d'utlagarie, added L. and M.

and Rob. and in MSS.

† owe added L. and M. and Rob.

(1) [See Note 203.]
ment purr eco que il ne puissoit a lers de prison pur faire continuall claime, &c.

T

THIS is evident enough.

"Per breve d'error." For hee shall have no writ of disseit, because the summons was according to the law of the land, by summoners and veiors, and the land taken into the king's hand by the pernor.

"Per default." Default is a French word, and defulta is legally taken for non-appearance in court. There bee divers causes allowed by law for saving a man's default; as, first, by imprisonment, whereof Littleton here speaketh. 2. Per inundationem aquarum. 3. Per tempus etatem. 4. Per hontem fractum. 5. Per navigium substructure per fraudem petenias, non enim debet quis se periculis et infortunius gratis exponere, vel subjacere. 6. Per minorem aetatem. 7. Per defensionem summonationum per legem. 8. Per mortem attornati si tenens in tempore non novit. 9. Si petens exorniatus sit. 10. Si placcitum mittatur sine die. 11. Per breve de warrantid dieti. But sicknesse (as one holds) is no cause of saving a default, because it may be so artificially counterfeited, that it cannot be knowne.

"Record." (1) Recordum, is a memoriall or remem-

brance in rolles of parchment, of the proceedings and acts [260. a.] of a court of justice which hath power to hold plea according to the course of the common law, of reall or mixt actions, or of actions quare vi et armis, or of personall actions, whereof the debt or damage amounts to fortie shillings or above, which we call Courts of Record, and are created by parliament, letters patents, or prescription.

It is aptly derived 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 sense the poet useth it, si rite audita recordor. But legally records are restrained to the rolles of such only as are courts of record, and not the rolles of inferior, nor of any other courts which proceed not secedundum legem et consuetudinem Angliae. And the rolles being the records or memorials of the judges of the courts of record, import in them such incontrollable credit and veritie, as they admit no aerverment, plea, or proofe to the contrarie. And if such a record be alleaged, and it be pleaded that there is no such record, it shall be tried only by it selfe: and the reason hereof is apparent, for otherwise, (as our old authors say, and that truly) there should never be any end of controversies, which should be inconvenient. Of courts of record you may read in my Reports: but yet during the terme wherein any judicull act is done, the record remaineth in the brest of the judges of the court, and in their remembrance, and therefore the roll is alterable during that terme, as the judges shall direct; but when that terme is past, then

(1) [See Note 204.]
the record is in the roll, and admiteth no alteration, averment, or proof to the contrarie.

If a grant by letters patents under the great seal be pleaded and shoved forth, the adverse party cannot plead nullo ticio record, for that it appeareth to the court that there is such a record; but inasmuch as it is in nature of a conveyance, the party may deny the operation thereof, therefore he may plead non concedit, and prove in evidence that the king had nothing in the thing granted, or the like, and so it was adjudged. But to return to Littleton: What then? shall a man that is in prison be privileged from suits or outlawries? Nothing lesse; for if the tenant or defendant be in prison, he shall upon motion, by order of the court, be 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 advantage of his imprisonment.

"A multò fortiori." Here is an argument, à minori ad majus, and the force of our author's argument is this: If a man in prison shall not be bound by a recoverie by default for want of answer in court of record in a real action; which is matter of record (the height and strength whereof hath beeene somewhat touched) à multò fortiori, a disseint in the countrey, which is matter of deed, shall not for want of claime binde him that is in prison. And as the argument à minori ad majus doth ever hold (as our author hath alreadie told us) affirmatively, so the argument à majori ad minus doth ever hold negatively, as our author here teacheth us; and the reason hereof is this, quod in minori valet, valebit in majori; et quod in majori non valet, nec valebit in minori.

"Pur ceo que il ne poiit ailer hors de prison, &c." By this it appeareth, that a man in prison by process of law ought to be kept in saluè et arcia custody, and by the law ought not to goe out, though it be with a keeper, and with the leave and sufferance of the gaoler: but yet imprisonment must be, custodia, et non jana: et que appartient aux minores custodiendos, non ad pumiendos dari debet.

Sect. 439.

\[F\]n mesme le manner il semble, lou\[F\] home est hors du royaume enservicel le roy, pur besoigne del royaume, si\[F\] le home soit disseisie quant il est enserviec le roy, \[F\] et le disseisor morust seia, le disseisie estieant le service le roy, que tiel disseint ne grieveroit le disseisor; mes pur ceo que il ne puissoit faire continuel claime, \[F\] il semble a\[F\] us, que quant il \[F\] vient en Engleterre, il poit enter sur l'heire le disseisor,

\[T\]he same manner it seemeth, where a man is out of the realme in the king's service, for the business of the realme, if such a one be disseised when hee is in service of the king, and the disseisor dieth seised, &c. the disseisie being in the king's service, that such disseint shall not hurt the disseisie; but for that hee could not make continuall claime, it seems to them, that when hee commeth

\[T\] &c. added in L. and M. and Rob. \[T\] revient, L. and M.

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disseissor, &c. Car tiel home reversera un ullagarihe & prononcic envers huy durant le temps que il fuit en le service le roy, &c. ergo, à multō fortiori, avera'aid et indemnitie per la ley eu l'autre case, &c.

commeth into England, he may enter upon the heire of the disseissor, &c. For such a man shall reverse an outlawrie pronouncide against him during the time that he was in the king's service, &c. therefore à multō fortiori, he shall have aid and indemnity by the law in the other case, &c.

"HORS du royalme," (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 upon the sea of England, he is within the kingdom or realm of England, and within the ligance of the king of England, as of his crowne of England. And yet altum mare is out of the jurisdiction of the common law, and within the jurisdiction of the lord admiral, whose jurisdiction is verie antient, and long before the reigne of Edward the third, as some have 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 minde, and by many other antient records in the reignes of Henrie the third, Edward the first, and Edward the second, is most manifest.

See 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.e.) over all the sea, pref:stua maris, vive classis, archithalasius: and in antient time the office of the admiralte was called custodia marina Anglia, or maritima Anglie.

And note Littleton saith not, beyond the sea, or extra quatuor maria, for a man reversa may be intra quatuor maria, and yet out of the realm of England. But intra quatuor maria, or extra, is taken by construction to be within the realm of England, or the dominions of the same.

But here a question may be demanded, What if a man be out of the realm, and a recovery is had against him in a practhe by default, whether shall he avoid 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 recovery by default? And it seemeth that he shall not avoid the recovery, for by that means a man might be infinitely delayed of his freehold and inheritance whereof the law hath so great a regard. And few or none goe over, but it is either of their owne free will, or by suit, for what cause soever; and he is not in that case without his ordinarie remedie, either by his writ of higher nature, or by a quod et d:forceat. But outlawrie in a personal action shall be avoided in that case, quia de minimis non curat lex, and otherwise he should be without remedie. See Section 437, and note the diversitie betweene that case of the imprisonment, and this of being beyond sea. And Littleton putteth the case of imprisonment, and omitte the being beyond sea here: neither have I seene

I sence any booke to warrant, that he that is beyond sea shall in this case avoid the recoverie by default.

"En service le roy." Bracton sheweth, that the exception of
being beyond sea is, quia fuit in servitio domini regit, ultra mare,
viz. out of the realme, and that case is cleere: but you shall heare
the opinion of Bracton in the next Section, where he is not in the
service of the king.

Sect. 440.

Item, autem ont dit, que si aucun
soit hors du realyme, comen que
il ne soit en service le roy, si tiel home
estant hors de le realyme est disseise
en terres ou tenements deins leroyalme,
and le disseisor deyv seise, &c. le dissei-
see estant hors du realyme, il semble
auz, que quant le disseiseerient deins
le realyme, que il poit * enter sur
l'heire le disseisor, et ceo semble a eux
per deux causes. Un est, que celuy
que est hors du realyme ne poit aver
conusans del disseisin fait a luy per
entendement de ley, nient plus que
chose fait hors du realyme poit estre
try deins le realyme per le serement
de 12. † et de compeller tiel home per la
ley de faire continuall claime, lequel
per l'entendement de le ley ne puit
avoir aucun notice ou conusance de tiel
disseisin, cee serra inconvenient, et
nusmement quant tiel disseisin est fait
a luy quant il est hors du realyme, et
auzy le morant seieisie quant il est hors
du realyme: car en tiel ease il
ne poit per nul possibility solonque
common presumption faire continuall
claime; mes autrement serroit si tiel
disseiseer fuit deins le realyme al tems
de le disseisin, ou al tems del morant
del disseisor.

Also, others have said, that if
a man bee out of the realme,
though hee bee not in the king's ser-
vice, if such a man being out of the
realme be disseised of lands or ten-
ements within the realme, and the
disseisor die seised, &c. the disseise-
see being out of the realme; it seemeth
unto them, that when the disseise-
see commeth into the realme, that he
may well enter upon the heire of the
disseisor, &c. and this seemeth unto
them for two causes. One is, that
hee that is out of the realme cannot
have knowledge of the disseisin made
unto him by understanding 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 understanding of the law can
have no knowledge or conisance of
such disseisin made or done, this
shall be inconvenient, namely, when
such a disseisin is done unto him
when he was out of the realme, and
also the dying seised was done when
he was out of the realme: for in such
case he may not by possibility after
the common presumption make con-
tinuall claime; but otherwise it
should be if the disseiseer were within
the realme at the time of the disse-
sin, or at the time of the dying seised of the disseisor.

And herewith the antient law of England is agreeable with
Listleton, and the law at this day. So as it is vetus & con-
stans opinio. Excusatur etiam quis quod clameum non oppo-
suerit,

* Men added in L. and M. and Roh.
† &c. added in L. and M. and Roh.
"Ni:nt plus que chose fuit hors del royalm poe etr dieins le royalms per le serement de l:..." And in this rule of law there is warily and truly put by Littleton, these words, \( \text{(by the oath of twelve men)} \) meaning by a jury. For by certificate a thing done beyond sea may be tried, as Littleton himselfe, Sect. 102, hath set downe. And all matters done out of the realme of England concerning war, com- bate, or deedes of armes, shall bee tried and terminated before the constable and sharry of England, before whom the triall is by witnesses, or by combite, and their proceeding is according to the civil law, and not by the oath of twelve men, as Littleton here speakeketh.

This rule here rehearsed by Littleton, is worthy of explication. If an alien (for example borne in France) bring a real action, and the tenant plead that the demandant is an alien borne under the obedience of the French king, and out of the leigeance of the king of England; shall this case want triall because the matter al- leged is out of the realme? then by the fiction of this plea, no de- mandant shall recover; therefore in this case the demandant shall reply, that hee was borne at such a place in England, within the king's leigeance, and hereupon a jury of twelve shall bee charged, and if they have sufficient evidence that hee was borne in France, or in any other place out of the realme, then shall they finde that hee was borne out of the king's alleageance; and if they have sufficient evi- dence that he was borne in England, or Ireland, or Jersey, or Jer- sery, or elsewhere within the king's obedience, they shall finde that he was born within the king's leigeance. And this hath ever 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 avoysdance of a fine or a descent, allege that he was out of this realme in Spaine, at the time of levyng of the fine, and at the time of the disseis and descent, the adverse party may allege that he was at such a place in England, &c. whereupon issue shall be taken, and then in evidence he may prove that he was out of the realme, &c. which, upon sufficient evidence, the jurie ought to finde. And in both these cases and the like, in a special verdict the jury may finde that he was borne beyond sea, or was beyond sea at that time, &c.

The statute of 25 E. 3, de prodigionibus, 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 bee thereof proveably attaint of overt fact, and that he shall forfeit all his lands, &c. A man must not imagine that seeing by the common law declared by authority of parliamant, that adhering to the king's enemies with- out the realme, is high treason, and that the delinquent may be attainted thereof, &c. that this should want triall, for then the judg- ment of the common law, and declaration of the parliament, should be illusory, which no well advised 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 alleged in some place within.
within England. And if upon evidence they shall finde any adherence out of the realme, they shall finde the delinquent guilty. But most commonly they indicted him (if he had lands) in some county where his lands did lie, that were to be forfeited; and this, as appeareth in our books, was the common use. And so it is declared by the statute (* of 35 H. 8. and that it shall be tried by twelve men of the countie, where the king’s bench shall sit, and be determined before the justices of that bench, on else before such commissioners, and in such shire of the realme, as shall be assigned by the king’s majestie’s commission, and this statute for this point remains in force at this day, and so it was resolved [a] by all the judges in my time, viz: in 33 Eliz. in the case of Orurcke. And anno [b] 34 Ediz. in sir John Perot’s case done in Ireland, for that it is out of the realme of England, and the case [c] in Mich. 19 & 20 Eliz. was utterly denied, and sir Christopher Wray himselfe (who is supposed to give his opinion in that case) protested that he never gave any such opinion, but did hold the contrary. When part of the act, especially the original, 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 tried here by 12 men; and those twelve men shall come out of the place where the writ is brought. For example, (which ever doth illustrate) it was covenanted by indenture, by charter party, that a ship should saile from Blackney haven in Norfolk, to Muttrel in Spaine, and there remaine by certaine dayes.

In an action of covenant brought upon this charter party, the indenture was alleged to be made at Thetford in the county of Norfolk, and upon pleading, the issue was joyned, whether the said ship remained at Muttrel in Spaine by the said certaine dayes. And it was adjudged that this issue should be tried at Thetford, where the action was brought, because there the contract took his original by making of the charter partie, and so hath it beene oftentimes adjudged in such like case. An obligation made beyond the seas may be sued here in England, in what place the plaintiff will. What then if it beare date at Bourdeaux in France, where shall it be sued? And answer is made, that it may be alleged to be made in quodam loco vocat Bourdeaux in France, in Ialsting in the county of Middlesex, and there it shall be tried, for whether there were such a place in Ialsting or no, is not traversable in that case. These points are necessary to be knowne in respect of the variety of opinions in our books. 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.

"Ceo serra inconvenient." Here also, as hath beene often said, appeareth, that argumentum ab inconvenienti, is strong in law.

"Auctorament est si le disseisee fuit deinos le royalme al tempo del disseise, &c." So as if a man be disseised before he goeth over sea, or commeth into the realme againe before the descent, the descent shall take away his entrie.

Vide Sect. 209.
Another matter they allege for a proofe that before the statute of King Edward the Third, made the 34th yeare of his reigne, by which statute non-claim is ousted, &c. the law was such, that if a fine were levied of certaine lands or tenements, if any that was a stranger to the fine had right to have and to recover the same lands or tenements, if he came not and made his claim thereof within a yeare and a day next after the fine levied, he shall be barred for ever, quia diecibatur quod finis finem iitibus imponebat. And that law was such, it is proved by the statute of West. the 2. De donis conditionalibus, where it is spoken if the fine bee levied of tenements given in the taile, &c. quod finis ipso jure sit nullus, nec habeant heredes, aut illi ad quos spectat reversio (licet fuerint plene etatis in Anglia, et extra prisonam) necessitate appronere clameum suum, &c. Insint etsi prove, que si un estrange home que avoit droit a les tenements, s'il fuit hors de royaume al temps del fine levie, &c. n'auera dammage, coment que il ne fiet son clame, &c. coment que tiet fine fuit mater de record: per grendere reason il semble a eux, que un disceisit et disenct que est mater en fait, ne insint trope grecevera eulay que fuit disseisin quant il fuit hors du royaume al temps de disseisin, et auxy al tems que le disseisor morust seise, &c. mes que il bien poit enter, nient contri-stant tiet disenct.

34 E. 3. cap. 16. (Ant. 254- b.)
4 H. 7. cap. 34. See as well this statute as the statute of 33 H. 8.

HERE it appeareth, what the common law was before the said statute, for non-clayme upon a fine levied. But now since Luteton wrote, by the statute of 4 H. 7, five yeares after proclamations made upon the fine are given to him that right hath to make his claim, or pursue his action, where the common law gave him

* 34. cap. 16. not in L. and M. nor Roh.  † &c. not in L. and M. nor Roh.  ‡ &c. added in L. and M. and Roh.
Of Continuall Claime.

him but a yeare and a day. But this statute of 4 H. 7. extends only to fines, and not to non-claime upon a judgement 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 levied, extendeth not to a judgement in a writ of right at this day, and therefore the common law in that case remaineth to this day, viz, that claime must bee made within a yeare and a day after judgement (1). Also if a fine be levied without proclamations, or without so many as the law requireth, then the statute of non-claime doth extend to such a fine.

Lib. 3. Sect. 442.

"Dicebatur finis, quia finem litis imponebat." (2) Here you may observe the etymologie of a fine. And herewith agreeeth (3) antiquity: Finis idcùd dicitur finalis concordia, quia imponit finem litis. But after the example (6) of Littleton, it is good to search out the etymologie or right derivation of words; for ignorantia terminus ignorantia et are, as hath beene often observed in other places. And the civilians call this judiciall concord, transactionem judicialem de re immobili.

"Licet fuerint plena etas in Anglia, et extra prisorum nam." In this act of 13 E. 1. De dundis conditionibus is one omitted, who is added in the statute De modo levandi finis, viz, et sine memorie. (c) But a fem-covert had no privilege of non-claime at the common law, as some have said, because she had a husband that might make claime for her. But yet Bruton saith, Item excerpturus aurum qua sub potestate viri vel haeeosit, quod clamum non apponuerit dictum matiere possessit, and citeth a judgement in the point; Trin. 4 H. 3. in Cuius case. But Fleta saith, Excerpturus si fuerit auro siccatus, si fuerit per virum impedita, quod non potuit apponere clamum. Also they in ressero or remainder expectant upon 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 entry was not lawfull; which was one of the principal causes of making of the said statute of 34 E. 3. which ousted non-claime. But these cases of coverture, and of them in ressio and remainder, are now without question holpen, and just provision made for the saving of their rights and titles by the said statute of 4 H. 7. as by the said act appeareth.

Sect. 442.

ITEM, quere si home soit disselles, et il arraigne un assise envers le dissiseur, et les recognitores de le assise chaunta

ALSO, inquire if a man be dissised, and he arraigne an assise against the dissisor, and the recognitores

(1) [See Note 206.]

(2) [See Note 207.]
Of ContinuallCLAIME.

"ARRAIGNE un assise." To arraigne the assise is to cause the tenant to be called to make the plaint, and to set the cause in such order as the tenant may bee enforced to answer thereunto; and is derived from the French word arraigner, which signifieth to order or set in right place. An arraignment is sometime called an instation, of the verbo assitio, compounded of ad and status, that is, to place or set in order one by another. In the same sense that Littleton here useth it, it is used when an appeale is arraigned, both which are arraigned in French, but entred [263. a.] in Latin. And it is to bee observed, that Littleton saith here arraigne un assise, and saith not that the tenant is arraigned; and so of the appeale; for these are the suits of the subject, and no man is said to be arraigned, but merely at the suit of the king, upon an endimention 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 up his hand, and to plead a sufficient plea to the endimention or other record, whereupon they which follow for the king may orderly proceed.

"Justices d'assise." Justices of assise are assigned and constituted by the king of the judges and sages of the law, and are called justices of assise, for that the writs of assise of novel dis aerosim, (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 every yeare at the least, whereupon they had authority to give judgment 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 justices of nisi prius (which was to trie issues only, except in quare implevit, and assises de darrein Fresen'ment, in which cases the justices of nisi prius might give judgment) they were denominated justices of assises: and divers acts of parliament have given to them great authority both in criminal cases and common plees. These justices of assise have also commissions of oire et termine, of gavel delivery and of the peace, of association, and si non omnes throughout their whole circuits; so as they are armed with ample, provident, but yet ordinary jurisdiction; for all their commissions are bounded with this express limitation, facturi quod ad justitiam pertinet secondum legem et consuetudinem Angliae. And in former time, according to the original institution and

† chaunta—chanterent, in L. and M. 
1 pris not in L. and M. nor Roh. 
§ &c. not in L. and M. nor Roh.

(1) i. e. Find, or give their verdict.
Of Continuall克莱.

and their commission, both the justices joined both in common pleas and pleas of the crowne.

3 Mar. Dies 90. 3 & 4 Eliz. Dies 305. (P. N. B. 360. c. 4. Ian. 161.)

“Si le dit suis del assise serra prise en ley, &c. un continual clame." And it is holden at this day that it shall amount to a clame, for that there was no default in him, as Littleton saith. [d] Some have objectified, that if the bringing of an assise should amount to continuall clame, and every continuall clame made by the disceesey vest the possession and freehold in him, therefore if bringing the assise, &c. should amount to a continuall clame, that then the writ should abate. But hereunto it hath beene answered in this chapter, that a continuall clame is an entry by construction of law for the advantage of the disceesey, but not for his disadvantage.

In a writ of entry our disceesey against one, supposing that he had not entred but by S. who disceesed him, the tenant said that S. died seised, and the land descended to him, and prayed his age; the plaintiff 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 clame.

If tenant in dower alien in fee with warranty, and the heire in the reversion being a writ of entry in casu proviso, &c. and hanging the plea the tenant dieth, the heire shall not be rebutted or barred by this warranty, for that the precipe did amount to a continuall clame. And herewith agreeeth (*) antiquity: Et si clameum non apponuerit, sufficit tamen si ille vel antecessor suus fuiat quod tantundem valeat, ut si placet moventem vel factum rem littigiosem; quia sic est factum aut appellare quam verbo, ita fuit est clameum apponere factum quan verbo: et ad hoc fuit de termino Sanctae Trinitatis, anno regni regis H. 3. 15. in com. Hunt. de Guduberga, cui objectum fuit, quod clameum non apposuit, et ipsa respondit, quod factum quod tantundem valet, quia tempore finis facti implacavit tenentem per aliud breve, &c.

If the goods of a villeine (before any seisure made by the lord) be distreined, the lord may have a repluvyn; and notwithstanding the bringing of the writ he had no property, yet the very bringing of the writ doth amount to a clame of the goods, and vesteth the property in the lord.

“Entant que nul default fuit en luy, &c." Hereby it is implied, that our author inclined to this opinion, that it should amount to a clame, for that no default was in him; et nemo debet rem suam sine facto aut defectu suo amittere, as the rule is.
et a ses heires, et de tiel estate morust seise, et la terre discendist a son heire, et puis apres un est elect, et fait abbe de mesme la monasterie, si mesme l'abbé poit enter sur le heire ou nemy. Et il semble a ascuns, que l'abbé bien poit enter en c eo cas, par c eo que le covent en temps de vacanc ne fit ascuns person abe de faire continuall claimes; car nient plus que ils sont personable de † suer action, nient plus ils sont abe de faire continuall claimes, car le covent † n'est for~sque| un mort corps sans teut, car en temps de vacanc un grant fait a eux, ou per eux, es roid et en est case l'abbé ne poit avoir breie d'entres sur dis~seins entrers le heire, pur c eo que il ne fut unques disresse. Et si l'abbé ne possoit enter en c eo case, donques il serra mis a son brete de droit, † &c. lequel servra trope dure pur le meason: per que s'embue a eux, que l'abbé bien poit enter, &c.

Queras de dubiis, legem bene
discere si vis:
Querrere dat sapere, qua sunt
legitima verè.

HERE, first, it is to be observed, that albeit the freehold and inheritance is in this case in no person, but in abeyance or in consideration of law, yet an entrie and claimie by one that hath no right shall gaine the inheritance by wrong. For here Litterton saith and of such estate died seised, &c. And so it is in case of a bishop, parson, vicar, prebend, or any other sole corporacion. And in the statute of Merlebridge it is called an intrusion.

Secondly, that seeing by the death of the abbott (which is the act of God) no person is able to make continuall claimie, therefore a discent during that time shall not prejudice the successor; for, as hath beene said, Impotentia excusant legem. If an usurpation bee had to a church in time of vacation, this shall not prejudice the successor, to put him out of possession, but that at the next avoidance bee shall present.

"Nien

* abbe added L. and M. and Roh.
† mesme not in L. and M. nor Roh.
‡ suer—faire, L. and M. and Roh.
§ n'est—est, L. and M. and Roh.

† come added L. and M. and Roh.
‡ &c. not in L. and M.
§ were not in L. and M. nor is any part of these two verses in the Camb. MSS.
Of Continuall Claime.

"Ment plus que ils sont able de suer action, &c." Here that which hath in this chapter beene said is confirmed, viz. That the entrie or continuall claime must pursue the action.

"Car la covent n’est forsque un mort person, &c." This is ratio sua, but not unica: but the rest of the corporation be no mort persons, as the chapter in case of deane and chapter, or the commonaltie in case of mayor and commonaltie; yet cannot they when there is no deane or maior make claime, because they have neither abilitie nor capacitie to take or to sue any action, as our author here saith.

[264. a] "Car en temps de vacation un graunt fait a eux ou per eux, est void, &c." And the reason is, because the body politique which is capable, is not complete, but wanteth the head. But this is to be understood of an immediate grant; for if during the vacation of the abathee of Dale, a lease for life, or a gift in taiue be made, the remainder to the abbot of Dale and his successors, this remainder is good, if there be an abbot made during the particular estate.

If there be maior and commonaltie of D. and the maior dieth, a graunt made to the maior and commonaltie of D. is void for the cause aforesaid; 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.

"Poei enter, &c." Here by this (?) is implied, or make his continuall claime in such sort as hath beene before expressed.

Quæras de dubiis, legem bene discere si vis: Quæ reræ dat sapere, quæ sunt legitima veræ.

Here Littleton expresseth an excellent means to attaine to the reason of the law, by enquiring of, and conference had with, learned men, of doubtfull cases:

Inter cuncta leges, & per cunctabere doctos.

For as collatio peperit artes, so collatio perficit artes: and this must bee continuall; for as knowledge increaseth, so doubts therewith increase also; Crescunt scientia, crescent simul et dubitationes.

And here Littleton citeh verie aptly two verses; for it is truly said, that Authoritates philosophorum medicorum et poëtarum sunt in causis allegando et tenendo; and our author doth cite a verse for memorie, but it is worthy of memorie.

CHAP. 8.

Of Releases (1). Sect. 444.

RELEASES are in divers manners, viz. releases of all the right which a man hath in lands or tenements, and releases of actions personals and reals, and other things. Releases of all the right which men have in lands and tenements, &c. are commonly made in this form, or of this effect:

Here our author beginneth with a division of releases.

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 real, of or in lands or tenements: or personal, of or in goods or chattels: or mixt, partly in the reality, and partly in the personalitie.

"Release," Relaxatio. Of the etymologie of this word you have heard before. Fleta [a] calleth it charta de qui tâ clamantisid.

N OVERINT universi per presentes, me A. de B. remississe, relaxasse, et omnino de me et heredibus meis quietum clamasse: vel sic, pro me et heredibus meic quietum clamasse C. de D. totum jus, titulum, et clameum quo habui, habeo, vel quovismodo in futuro. habere potero, de et in uno messuagio eum pertinentii in F. &c. Et est ascavoir, que ceux verbs remississe, et quietum clamasse, sont de un tiel effect sicome tiels verbs, relaxasse.

K NOW all men by these presents, that I A. of B. have remised, released, and altogether from me and my heirs quiet claimed: or thus, for mee and my heires quiet claimed to C. of D. all the right, title, and claim which I have, or by any means may have, of and in one messuage with the appurtenances in F. &c. And it is to bee understood, that these words, remississe, et quietum clamasse, are of the same effect as these words, relaxasse.

N OVERINT universi per presentes, &c." Here Littleton sheweth presidents of releases of right: and presidents doe both teach and illustrate, and therefore our studient is to be well stored with presidents of all kindes.

"Remississe, relaxasse, et quietum clamasse." Here Littleton sheweth, that there be three proper words of release, and bee much of one effect: besides, there is renunciare, acquietare, and there bee many

1 Vide Min. cap. 5. sect. 17.
2 Vide Brit. 101.
4 Vide Sect. 492.
5 a Fleta, ubi supra.
(1) [See Note 208.]
many other words of release; 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. 332.

And it is to bee understood, that there bee releases in deed, or express releases, whereof Littleton heere hath shewed an example. These express 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 dissiece the tenant, and make a feoffment in fee by deed or without deed, this is a release of the seignioire. And so it is if the disseisee disseise the heire of the disseisor, and make a feoffment 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 obligor make the obligee 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 (1).

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 (2).

If an infant of the age of seventeene yeares release a debt, this is void; but if an infant make the debtor his executor, this is a good release in law of the action (3).

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 devastavit, which an act in law shall never worke. And so it was adjudged in the king's bench, Mich. 30 & 31 Eliz. in which case I was of counsell.

But it is to be observed, that there is a diversitie 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 ever. But if the disseisee doth disseise the heire 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 favourable, according to the intent and meaning of the parties, than a release in deed, which is the act of the partie, and shall be taken most strongly against himselfe, and so in the case aforesaid, where the debtor is made executor.

"Totum jus, titulum, et clameum." But note, that jus, or right, in general signification includeth not onely 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 given by law, but only an entry.

(1) [See Note 200.]
(2) [See Note 210.]
(3) [See Note 211.]
ITEM, ceux parolx que sont commumement mis en ticix faits de releases, * scilicet (quaæ quovis modo in futurum habere potero) sont scilicet voïdes en le ley; car nul droit passa per un release, forseque le droit que le releasor ad al tems de le releas fait. Car si soit pier et fils, et le pier soit diseseice, et le fils (vivant son pier) releas per son fait a le diseseice tout le droit que il ad ou aver puissoit en mesmos les tenements sans clause de garranctie, &c. et puis le pier morust, &c. le fils poit loyalemnt enter sur la possession le diseseice, pur cec que il n'avoit / droit en la terre ; en la vie son pier, mes le droit descendedist a bury per disesent apres le releas fait per le mort son perer, &c.

ALSO, these words which are commonly put in such releases, scilicet (quaæ quovis modo in futurum habere potero) are as soide in law: for no right passeth by a release, but the right which the releasor hath at the time of the release made. (1) For if there be father and sonne, and the father bee diseseied, and the sonne (living his father) releaseth by his deed to the diseseor all the right which he hath or may have in the same tenements without clause of warrantie, &c. and after the father dieh, &c. the sonne may lawfully enter upon the possession of the diseseor, for that lee had no right in the land in his father's life, but the right descended to him after the release made by the death of his father, &c.

NOTE, a man may have a present right, though it cannot take effect in possession, but in futuro (2).

As hee that hath a right to a reversion or remainder, and such a right he that hath it may presently release. But here in the case which Littleton puts, where the somme release in the life of his father, this release is void, [a] because he 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.

The baron make a lease for life and dieth, the release made by the wife of her dower to him in reversion is good, albeit shee hath no cause of action against him in present.

"Sans clause de garranctie." For if there bee 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 heirs 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 covenant reall should barre a future right, is for avoiding of circuitie of action (which is not favoured in law); as he that made the warrantie should recover the land against the ter-tenant, and he by force

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* scil.—&c. in L. and M. and Rob.
† nul added in L. and M. and Rob.
(1) [See Note 212.]
(2) [See Note 213.]
force of the warrantie to have as much in value against the same person: yet is there a diversitie betweene a warrantie and a feoffment; [6] for if there be grandfather, father, and sonne, and the father disseiseth the grandfather, and make a feoffment in see, the grandfather dieth, the father against his owne feoffment shall not enter; but if he die, his sonne shall enter. And so note a diversitie betweene a release, a feoffment, and a warrantie: a release in that case is void: a feoffment is good against the feoffor, but not against his heire; a warrantie is good both against himselfe and his heires (1).

And here are three diversities worthy of observation, viz. First, betweene a power or an authoritie, and a right. Secondly, betweene powers and authoritie themselves. Thirdly, betweene a right and a possibilitie.

As to the first, if a man by his last will deviseth 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 have neither right nor title to the land, but only a bare authority, which is not within Littleton's case of a release of a right. And so it is if cessy gue use had devised that his feoffees should have sold the land. Albeit they had made a feoffment over, yet might they sell the use, for their authority in that case is not given away by the livery.

As to the second, there is a diversitie betweene such powers or authorities as are only to the use of a stranger, and nothing for the benefit of him that made the release (as in the case before) and a power or authority which respecteth the benefit of the releasor; as in these usuall powers of revocation, when the feoffor, &c. hath a power to alter, change, determine, or revoke the uses (being intended for his benefit) he may release; and where the estates before were defeasible, he may by his release make them absolute, and seclude himselfe from any alteration or revocation, as it hath beene resolved; which diversitie you may read in [m] Albanie's case (2).

As to the third, before judgement the plaintiff in an action of debt releaseth to the baile in the king's bench all demands; and after judgement is given, this shall not barre the plaintiff to have execution against the baile, because at the time of the release he had but a meere possibility, and neither jus in re, nor jus ad rem, but the duty is to commence after upon a contingent, and therefore could not be released presently. So if the concussor of a statute, &c. release to the concussor all his right in the land, yet afterwards he may sue execution; for he hath no right in the land till execution, but only a possibilitie; and so have I knowne it adjudged (3).

(1) [See Note 214.]
(2) See Note 2 to page 113. The doctrine of the suspension and extinction of powers will be considered in a note to the chapter of Discontinuance.
(3) [See Note 215.]
ITEM, en releases de tout le droit que home ad en certein terres, &c. il covient a cely a que le releas est fait en ascun cas, que il ad le francktenement en les terres en fait, ou en ley, al temps de releas fait, &c. Car en chescun cas lou cely a que le releas est fait, ad francktenement en fait, ou francktenement en ley, al temps del releas, || &c. § donque le releas est borne.

ALSO, in releases of all the right which a man hath in certaine lands, &c. it behoveth him to whom the release is made in any case, that he hath the freehold in the lands in deed, or in law, at the time of the release made, &c. For in every case where he to whom the release is made, hath the freehold in deed, or in law, at the time of the release, &c. there the release is good (4).

E tout le droit." This must be intended of a bare right, and not of a release of right, whereby any estate passeth, as to a lessee for yeares, &c. as shall be said hereafter. Also it must be intended of a release of a right of freehold at the least, and not to a right for any terme for yeeres or chattel reall; as if lessee for yeares bee ousted, and hee in the reversion disseised, and the disseisor maketh a lease for yeares, the first lessee may release unto him. All which is implied 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 available in law, [c] as the demandant 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 becometh tenant to the demandant, and may render the land to him, in respect of the privitie; but an estranger cannot release to the vouchee, because, in veritate, he is not tenant of the land.

And so it is if the tenant alien hanging the præcipe, the release of the demandant to the tenant to the præcipe [266. a.] is good, and yet he hath nothing in the land.

In time of vacation an annuity, that the person ought to pay, may be released to the patron in respect of the privitie, but a release to the ordinary only seemeth not good, because the annuitie is temporall.

If a disseisor make a lease for life, the disseissee may release to him; for to such a release of a bare right there needs no privitty, as shall be said hereafter. But if the disseisor make a lease for yeares, the disseissee 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 chivalry, and her right of freehold shall drowne in the chattell, because the writ of dower doth lie against him, and the heire shall take advantage of it. And it is to be observed,

* ascun—siel, in L. and M. and Roh.
† &c. added in L. and M. and Roh.
‡ &c. not in L. and M. nor Roh.
§ donque not in L. and M. nor Roh.

(4) Ant. 1st Note to this Chapter.
observed, that by the antient 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 avoyded great oppression, injurie, and injustice. Nul charter, nul vende, ne nul done vauti perpetuament sie donor n' est seise al temps de contracte de 2. droits, a. del droit de possession, et del droit del propriete. And therefore well saith Littleton, that he to whom a release of a right is made must have a freehold.

For the better understanding of transferring of naked rights to lands or tenements, either by release, feoffment, or otherwise, it is to be knowne, that there is *jus proprieatis*, a right of ownership, *jus possessioinis*, a right of seisin or possession, and *jus proprietais & possessioinis*, a right both of property and possession: and this is antiently called *jus duplicatum, or droit doyti*. For example, if a man be diseised of an acre of land, the diseissee hath *jus proprietais*, the disseisor hath *jus possessioinis*; and if the diseissee release to the disseisor, he hath *jus proprietais et possessioinis* (1). And regularly it holdeth true, that when a naked right to land is released to one that hath *jus possessioinis*, and another by a meane title recover the land from him, the right of possession shall draw the naked right with it, and shall not leave 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 diseissee 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 leave the meere right in A. but by the recontinuance of the possession, the meere right is therewith vested in the heire of the disseisor.

But if the donee in taile discontinue in fee, now is the reversion of the donor turned to a naked right. If the donor release to the discontinue and die, and the issue in taile doth recover the land against the discontinue, he shall leave the reversion in the discontinue; for the issue in taile can recover but the estate taile onely, and by consequence must leave the reversion in the discontinue, for the donor cannot have it against his release: but if the diseissee enter upon the heire of the disseisor, and infeoffe A. in fee, and the heire of the disseisor recover the whole estate, that shall draw with it the meere right, and leave nothing in the feoffee. *Nota* the diversity. Another diversity is observable 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 [c]. As if the diseissee diseise the heire of the disseisor, albeit the heire recover the land against the disseisor, yet shall he leave the preceding right in the diseissee. So if a woman that hath right of dower disseise the heire, and he recover the land against her, yet shall he leave the right of dower in her.

Another diversity 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 leave it in him: as if the heire of the disseisor be diseised, and the disseisor infeoffe the heire apparent of the diseissee being of full age,

(1) [See Note 216.]
Of Releases. Sect. 448.

age, and then the disseisee dieth, and the naked right descend to him, and the heire of the disseisor recover the land against him, yet doth he leave the naked right in the heire of the disseisee. So if the discontinuice of tenant in tailie inoffe the issue in tailie of full age, and tenant in tailie die, and then the discontinuice recover the land against him, yet he leaveth the naked right in the issue [c]. But if the heire of the disseisor be disseised, and the disseisee release to the disseisor upon condition, if the condition be broken, it shall revest the naked right. And so if the disseisee hath entred upon the heire of the disseisor, and made a feoffment in fee, upon condition, if he entred for the condition broken, and the heir of the disseisor entred upon 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 ever. But now let us heare what Littleton saith.

Sect. 448. [266. b.]

FRANKTENEMENT en ley est, siccome un home disseisist un auter, et * morust seissie, per que les tenements descendont a son fils, coment que son fils ne entra pas en les tenements, uncoor il ad un fraktenement en ley, quel per force de dissei est ject sur luy, et pur cee un releas fait a lui, issint eissant seissie de franktenement en ley, est assets bon; et s'il pren feme eissant eissant seissie en ley, coment que il ne unque enter pas en fait, et morust, son feme serra endow †.

FREEHOLD in law is, as if a man disseiseth another, and dieth seised, whereby the tenements descend to his sonne, albeit that his sonne doth not enter into the tenements, yet he hath a freehold in law, which by force of the disseisent is cast upon 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 never enter in deed, and dieth, his wife shall be endowed.

HERE Littleton describeth what a freehold in law is, for he had spoke before in many places of freeholds in deed. This Bracton calleth [a] civilem et naturalcem possessionem seu seissiam. The natural seisin is the freehold in deed, and the civil the freehold in law (1).

If a man levie a fine to a man sur consusance de droit come cee que il ad de son done, or a fine sur consusance de droit tantum; these be feoffments of record, and the comusee hath a freehold in law in him before hee entret.

Upon an exchange, the parties have neither freehold in deed, nor in law, before they enter; so upon a partition the freehold is not removed untill an entry.

[g] If tenant for life by the agreement of him in the reversion surrender unto him; he in the reversion hath a freehold in law in

* ent added L. and M. and Roh.
† &c. added L. and M. and Roh.

(1) [See Note 217.]
him before he enter [h]. Upon a livery within the view no freehold is vested before an entrèe.

If a man doth bargain and sell land by deed indented and inrolled, the freehold in law doth passe presently. And so when uses are raised by covenant upon good consideration.

If a tenant in a præcipe being seised of lands in fee, confesseth himself 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 entry. But let us return to Littleton.

Sect. 449.

ITEM, en ascuns cases de releases de tout le droit, coment que celui a que le release est fait n'ad riens en le franktenement en fait ne en ley, encore le release est assets bone. Si comme le disseisor lessa la terre que il ad per disseisin a un auter pur terme de sa vie, savant le reverison a lay, si le disseisor ou son heire releassa al disseisor tout le droit, &c.

cel release est bone, pur en que ce. hay a que le release est fait, avoit en lay un reverison al temps del release fait.

ALSO, in some cases of releases of all the right, albeit (2) that he to whom the release is made hath nothing in the freehold in deed nor inlaw, yet the release is good enough. As if the disseisor leteth the land which he hath by disseisin to another for term of his life, saving the reverison to him, if the disseisee or his heire release to the disseisor all the right, &c. this release is good, because he to whom the release is made, had in law a reverison at the time of the release made (1).

HERE Littleton addeth a limitation to the next precedent Section, viz. that a release of all the right may be good to him in reverison, albeit he hath nothing in the freehold, because he hath an estate in him.

"Tout le droit, &c." Or title, interest, demand, or the like; and so it is if he in the reverison hath an estate for life or in taile in reverison, as in the like case it appeareth in the next Section.

Sect. 450.

Enmesme le maner est, lou leas est fait a un home pur terme de vie, le remainder a un auter pur terme de *auter vie, le remainder a le tierce en le

IN the same manner it is, where a lease is made to a man for term of life, the remainder to another for term of another man's life, the remainder

*auter not in L. and M. nor Roh. nor in Camb. MSS.

(2) [See Note 218.] (1) [See Note 219.]
Of Releases.

Section 451, 452.

remainder to the third in tail, 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 everie of them hath a remainder in deed vested in him.

Here is another limitation, that a release 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 beeene said. In both these limitations it is to be observed, that the state which makest a man tenant to the præcipe is said to be the freehold, as here the state of tenant for life, and not the reversion in fee.

Section 451.

Mes si le tenant a terme de vie soit disseise, et puis celuy que ad droit (cetant le possession en le disseisor) releessa a un de eaux a que le remainder fuit fait tout son droit, cet release est void, pur ceo que il n'avoit un remainder en fait al temps de release fait, forseque tantsolemens un droit del remainder.

"Forsque tantsolemens un droit del remainder." For a release of a right to one that hath but a bare right regularly is void; for, as Littleton hath before said, hee to whom a release is made of a bare right in lands and tenements, must have either a freehold in deed or in law in possession, or a state in remainder or reversion in fee or fee tail, or for life.

Section 452.

Et nota, que chescun release fuit a celuy que ad un reversion ou un remainder en fuit, servera et aidera celuy que ad le franktiment, auxy bien come a celuy a que release fuit fait, si le tenant avoit le release en son poigne de pleader.

† son—le, L. and M. and Roh.
† en lay added L. and M. and Roh.

And note, that every release made to him which hath a reversion or a remainder in deed, shall serve and aid 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.

† de pleader not in L. and M. nor Roh.

Section.
EVT en mesme le manner † est lou
un release † est fait al tenant pur
forme de vie, on al tenant en le taile,
‡ cee urera a eux en le reversion, ou a
eux en le remainder, auxybieng come al
tenant de franktenement, et aceront
auzy grand advantage de cel, s'ils cee
poient monstre §.

IN the same manner it is where a
release is made to the tenant for
life, or to the tenant in taile, this shall
ensure to them in the reversion, or
to them in the remainder, as well as
to the tenant of the freehold, and
they shall have as great advantage
of this, if they can shew it.

BY this it appeareth, that as a release made of a right to him in
reversion or remainder, shall aid and benefit him that hath the
particular estate for yeares, life, or estate taile, so a release of a
right made to a particular tenant for life, or in taile, shall aid and be-
benefit him or them in the remainder.

If two tenants in common of land graunt a rent charge of 40s.
out of the same to one in fee, and the grantee release to one of
them, this shall extinguish but twentye shillings, for that the graunt
in judgement of law was severall (1). So it is if two men be seised
of severall acres, and grant a rent ut supra. But there is a diver-
sitie betweene severall estates in seveall lands, and severall estates
in one land; for if one be tenant for life of lands, the reversion in
fee over to another, if they two joyn in a grant of a rent out of
the lands, if the grantee releasest either to him in the reversion,
or to tenant for life, the whole rent is extinguished, for it is
but one rent, and issueth out of both estates, and so note the diver-
sitie (2).

Sa El 6 8.

“Si le tenant ad le fait en son poignie a pleader.” And so it is in
both cases: for albeit he in the reversion 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 reversion or remainder, yet seeing they are privy in
estate, none of them in pleading shall take benefit thereof, without
shewing the same in court, which is worthy to be observed.

“S’ils cee poient monstre.” The one cannot plead the release
made to the other without shewing of it, for that they are privie in
estate, as hath beene said. The residue of these two Sections needs
no explication.

† est lou not in L. and M. nor Roh.
† est not in L. and M. nor Roh.
‡ cee not in L. and M. nor Roh.
§ &c. added in L. and M. and Roh.

(1) [See Note 220.] (2) [See Note 221.]
ITEM, si soit seignior et tenant, et le tenant soit disseise, et le seignior releessa al disseise toute la droit que il avoit en le seigniorie ou en le terre, cel release est done, et le seignioric est extincte: et cec est pur cause del privitie que est perentier le seignior et le disseise. Car s'il se disseise soient pris, et de eux le disseise suist un replevin encors le seignior, il compellera le seignior d'avouer sur luy; car s'il avouer sur le disseiser, donques sur le matter monstre l'avowrie abatera, car le disseise 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 disseise 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 privitie which is betweene the lord and the disseise. For if the beasts of the disseise be taken, and of them the disseise sueth a replevin against the lord, hee shall compel the lord to avow upon him; for if hee avow upon the disseiser, then upon the matter shown the avowrie shall abate, for the disseise is tenant to him in right and in law (1).

HEREUPON may bee collected and observed two diversities: first, betweene a seigniorie or rent service, and a rent charge: for a seigniorie or rent service may bee released and extinguished to him that hath but a bare right in the land. And the reason hereof is, in respect of the privitie betweene the lord and the tenant in right; for he is not only as tenant to the avowrie, but if hee die, his heire within age, hee shall bee in ward; and if of full age, hee shall pay releefe; and if he die without heire, the land shall escheat. But there is no such privitie in case of a rent charge, for the charge only lieth upon the land.

The second diversity is between 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 void, as hath been said. But here in the case of our author, a release of a seigniorie to him that hath but a right, is good to extinguish the seigniorie.

Nota, a seigniorie, rent, or right, either in presenti, or in futuro, may be released five manner of ways, and the first three without any privitie, First, to the tenant of the freehold in deed or in law. Secondly, to him in remainder. Thirdly, to him in the reversion. The other two in respect of privitie: as, first, here the lord releaseth his seigniorie to the tenant being disseised, having but a right, and no estate at all: secondly, in respect of the privitie, 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.

"Per cause de privitie, &c." See for this word (privitie), Sect. 461.

(1) Here the release operates by way of extinguishment. See post. 279. b.
“Il compellera le seignior d’avouer sur lui, &c.” This is regularly true; but if the lord hath accepted services of the disseisor, then the disseisee cannot enforce the lord to avow upon him, though his beasts be taken, &c. (2).

If a man hath title to have a writ of escheat, if he accept homage or fealty of the tenant, 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 do hold, that if there be lord and tenant, and the tenant be disseised, and the disseisee die without heir, the lord accepts rent by the hands of the disseisor, this is no bar to him. Contrarie it is, if he avow for the rent in court of record, or if he take a corporall service, as homage or fealty, 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 escheate, which is to be understood of a descent or feoffment, after the title of escheat accrued: [e] for if the disseisor make a feoffment in fee, or die seised, and after the disseisee die without heir, 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 pat, should have compelled the lord to have avowed upon him, as Littleton holdeth. But now this is altered by a latter statute of [f] 21 H. 8. For whereas by fines, recoveries, grants, and secret feoffments, &c. made by tenants to persons unknowne, the lords were put from knowledge of their tenants, upon whom by order of law they should make their avowrie, &c. it is by that statute enacted, that if the lord shall distraine upon the lands and tenements holden, &c. that he may avow, &c. upon the same lands, &c. as in lands, &c. within his fee or seigniorie, &c. without naming of any person certaine, and without making avowrie upon a person certaine. Upon which statute these foure points are to be observed. First, that the lord hath still election either to avow according to the common law, by force of the statute, by reason of this word (may). Secondly, albeit the purview of the act be general, yet all necessary 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 avowrie upon any person certaine, yet he must allege seisin by the hands of some tenant in certaine, within fortie yeares. Thirdly, that if the avowrie be made according to the statute, everie plaintiff in the replevin, or second deliverance, be he termor or other, may have everie answer to the avowrie that is sufficient; and also have aid, and everie other advantage in law (disclaimer only except); for disclaimne he cannot, because in that case the avowrie is made upon no certaine person. Fourthly, where the words of the statute be, if the lord distraine upon the lands and tenements holden, yet if the lord come to distraine, and the tenant enchease his beasts which were within the view out of the land holden, and there the lord distraine, albeit the distresse be taken out of his fee and seigniorie in that case, yet is it within the said statute: for in judgment of law the distresse is lawfull, and as taken within his fee and seigniorie; and this statute being made to suppress fraud, is to be taken by equitie (1).

(2) [See Note 222. ] (1) See the following page. Gilb. Distr. 189. Lord Raym. 237.
Sect. 455.

**ITEM**, si terre soit done a un home en taile, reservant al donor et a ses heires un certaine rent, si le donee soit disseisie, et puis le donor releessa al donee et a ses heires tout le droit que il a voit en la terre, et puis le donee enter en la terre sur le disseisor; en cest case le rent est ale, pur cee que le disseisee al temps de release fait, fuit tenant en droit et en la ley al donor, et avowrie a fine force covient de cest fuit sur luy per le donor pur le rent aderecer, &c. Mes uncere rien de droit de terres, scilicet, de le droit de le reversion, passera per tiel release, pur cee que le donee a que le release est fait, adonque n'avoit rien en la terre forseque tansolmente un droit, et issit le droit del terre ne puissoit adjongues passser al donee per tiel release.

**ALSO**, if land be given to a man in taile, reserving to the donor and to his heires a certaine rent, if the donee be disseised, and after the donor release to the donee and his heires all the right which he hath in the land, and after the donee enter into the land upon 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 avowrie of fine (2) force ought to bee made upon him by the donor for the rent behinde, &c. But yet nothing of the right of the lands, (scilicet) of the reversion, 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.

 Vide Sect. 484.
 1 H. 8. 61.
 25. 43.
 14 H. 4. 33.
 15. 3. fol. 69.
 Lib. 6. 15.
 Lampet's case
 subs supra.
 (Ant. 6d. Post. 34d.)
 [m] 10 T. 3. 25.
 48 E. 3. 28.
 51 E. 3. gard.
 116. 5 E. 4. 3.
 7 E. 4. 87.
 18 E. 4. 13.
 [s] Trin.
 18 Eliz. sir Thomas Wiat's case
 in communi
 hasta.

"**SI le donee soit disseisie, &c.**" This is evidently by that which hath beene said. But admit that the donee [269. a.]

maketh a feoffment in fee, and the donor release unto him and his heires all the right in the land, this shall extinguish the rent, because the lord must avow upon him, and yet the tenant in taile after the feoffment hath no right in the land. But the reason is in respect of the privity, and that the [m] donor is by necessity compellable to avow upon him only; for if he should avow upon the discontinuée, then it should appeare of his owne shewing that the reversion whereunto the rent is incident, should be out of him, and consequently the avowrie should abate; and so was it [n] resolved Trin. 18 Eliz. in the court of common pleas in sir Thomas Wiat's case, which I heard and observed. And Littleton saith here, that in case of the disseisin of fine force, the avowrie must be made upon the donee.

"**Uncore rien de droit, &c. de reversion, &c.**" Here the diversitie aforesaid betwixt the rent service and a bare right to the land appeareth.

*adongues ne added L. and M. and Roh. † adongues not in L. and M.  
(2) That is, of necessity.
In the same manner it is, if a lease be made to one for term of life, reserving to the lessor and to his heirs a certain rent, if the lessee be disconsolate, and after the lessor release to the lessee and to his heirs all the right which he hath in the land, and after the lessee entereth, albeit in this case the rent is extinct, yet nothing of the right of the reversion shall passe, causâ quà supra.

Hereby the diversity is made apparent between a release of a rent service out of land, and a release of right to land, in this Section.

But if there be very lord and very tenant, and the tenant maketh a feoffment in fee, the which feeoffor doth never become tenant to the lord, if the lord release to the feeoffor all his right, &c. this release is altogether void, because the feeoffor hath no right in the land, and he is not tenant in right to the lord, but only tenant as to make the avowrie, and fee shall never compel the lord to avow upon him, for the lord shall avow upon the feeoffor if hee will.

VERAY seignior et veray tenant. This is to be understood of a lord in fee simple, and of a tenant of like estate.

There be foure manner of avowries for rents and services, &c. viz. 1. Super verum tenement, as in the case here put. 2. Super verum tenement in formâ predicata, as where a lease for life, or a gift in tail tie be made, the remainder in fee. 3. Upon one as upon his tenant by the manner emitting (verie); and this is when the lord hath a particular estate in the seigniorie, and so shall the donor upon the donee, or lessor upon the lessee. 4. Sur le materter en terre, as within his fee and seigniorie. As where the tenant by knights service make a lease for life reserving a rent, and die his heir within age, the gardeline shall avowe upon the lessee, sedile, super materterum predicatam in terris et tenementis predicatam, ut infra frudum et dominium suum. Now by the statute the very lord may

* was added in L. and M. and Roof.  
+ &c. added in L. and M. and Roof.
may avow, as in lands within his fee and seignioric, without avowing upon any person in certaine (1).

Here appeareth the diversity betwene a tenant in talle, and a tenant in fee simple; for albeit tenant in talle make a feoffment in fee, yet the right of the entaille remaine, and shall descend to the issue in talle. 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 avow upon the feoffor; but if he will, as Littleton here saith, he may avow on the feoffee; but so it is not, as hath beene said, in case of tenant in talle.

Note a diversity betwene actions and acts which concerne the right, and actions and acts which concerne the possession only. For a writ of customes and services lieth not against the feoffor, nor a release to him shall extinguish the seignioric. 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 be avoided. For these actions and acts concerne the right; but of a seisin and an avowrie which concerne the possession, it is otherwise. And if the lord release to the feoffor, this is good betwene them, as to the possession and discharge of the arrerages, but the feoffee shall not take benefit of it, for that, as hath beene said, it extendeth not to the right. But the feoffor shall plead a release to the feoffee, for thereby the seignioric is extinct; as if lessee for life doth waste, and grant over his estate, and the lessor release to the grante, 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 pracie after a feoffment made. And so in a codicis formans collationes.

"Le feoffee ne ungues devezque tenant." Nota here an excellent point of learning, viz. if there be lord and tenant, and the rent is behind by divers yeares, and the tenant make a feoffment in fee, if the lord accept the service or rent of the feoffee due in his time, he shall lose the arrerages due in the time of the feoffor; for after such acceptance he shall not avow upon the feoffor, nor upon 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 service by the hand of the feoffee due in his time, he shall not lose the arrerages, for now the law compelleth him to avow upon the feoffee (2), and that which the law compelleth him unto shall not prejudice him.

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 fore-judge the mesne, and the lord receive the services of the mesne which issue out of the tenancie, he shall not be barred of the arrerages which issued out of the mensalty; and so if the rent be behind, and the tenant dieth, the acceptance of the services by the hand of the heir shall not barre him of the arrerages; for in these cases, albeit the persons be altered, yet the lord doth accept the services of him which only ought to doe them (3).

But

(1) [See Note 223.]
(3) [See Note 223.]
(2) [See Note 224.]
(3) [See Note 224.]
Of Releases.

But as long as the feoffor liveth the lord shall not be compelled to avow upon the feoffee, unless he giveth the lord notice, and tender unto him all the arrerages.

But now by the statute the lord may avow upon the lands so holden, as in lands within his fee or seignior, without naming of any person certaine to bee tenant of the same, and without making of any avowrie upon any person certaine, as hath beene said, which hath much altered the common law in the cases abovesaid, for the benefit and safety of the lord.

But yet these cases are necessary to be knowne (for which purpose I have added them), for that the lord may avow still at the common law if he will.

[270. a.]

AUTERMENT est lou le ve- ray tenant est disseised, come en le cas avoantdit; car si le veray tenant que est disseised, teigne del seignior per service de chivaler et morust (son heire estant deins age), le seignior aecra et seizera le garde del heire, et issiat n'avoit il my le gard del feoffor que fist le feoffment en fee, &c. issiat il est grand diversity enter les deux cases, &c.

Of this sufficient hath beene said before.

OTHERWISE it is where the very tenant is disseised, as in the case aforesaid; for if the very tenant who is disseised, hold of the lord by knights service and dieth (his heire being within age), the lord shall have and seize the wardship of the heire, and so shall he not have the ward of the feoffor that made the feoffment in fee, &c. so there is a great diversitie betwene these two cases.

Sect. 459.

ALSO, if a man letteth to another his land for terme 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 have the same land by force of the lease. But if the lessee enter into the land, and hath possession of it by force of the said lease, then such release made to him by the feoffor, or by his heire, is
Of Releases.

cause del privitie que per force del
leas est perenter eux, &c. is sufficient to him by reason of the
privitie which by force of the lease
is between them, &c. (4)

DEVANT que le lessee acoat enter, &c." For before entry
the lessee hath but interesse termini, an interest of a terme,
and no possession, and therefore a release which enures by way of
enlarging of an estate cannot worke without a possession (2), for
before possession there is no reversion; and yet if a tenant for
twenty yeares in possession make a lease to B. for five yeares, and
B. enter, a release to the first lessee is good, for he had an actual
possession, and the possession of his lessee is his possession. And so
it is if a man make a lease for yeares, the remainder for yeares,
and the first lessee doth enter, a release to him in the remainder
for yeares is good to enlarge his estate (3).

But if a man make a lease for yeares to beginne presently, re-
serving a rent, if before the lessee doth enter the lessor releaseth
all the right that hee hath in the land, albeit this release cannot
enlarge his estate, yet it shall in respect of the privity extinguish
the rent. And so it is if a lease be made to beginne at Michael-
mas, reserving 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 privity,
as it was resolved [5] in the eschequer, which I observed.

A man granteth the next avoidance of an advowson to two, the
one of them may before the church become void release to the
other; for although the grantor cannot release to them to increase
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 privity. But after the church become void, then
such a release is void, because then it is (as it were) but a thing
in action. And this was resolved [c] by the whole court of com-
mon pleas, which I myselfe heard and observed. And by conse-
quent 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 entry release to the
other.

"Mes tantolement un droit, &c." Which is not so to be under-
stood that he hath but a naked sight, for then he could not grant
it over; but seeing he hath interesse termini, before entrée, he may
grant it over, albeit for want of an actual possession, he is not
capable of a release to enlarge his estate.

"Mes si le lessee enter en meeme le terre, &c." This is evident.
And herein note a diversity betweene a lease for life, and for yeares,
for before the lessee for yeares enter, a release cannot be made
unto 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 hee doth enter to enlarge his

(1) On releases which operate by en-
largement, see post. 378. 3.

(2) [See Note 226.]

(3) [See Note 227.]

estate, for that he hath an estate of a freehold in law in him, which may be enlarged by release before entrie.

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 et cetera, or the like.

Sect. 460.

By these two Sections is to be observed a diversity between 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 privity; but a release to a tenant at sufferance is void, because he hath a possession without privity. As if lessee for yeares hold over his terme, &c. a release to him is void, for that there is no privity betweene them; and so are the books that speake of this matter to be understood (1).

"Sed contrarium tenetur, &c." This is of a new addition, and the booke here cited ill understood, for it is to be understood of a tenant at sufferance.

Sect. 461.

But where a man of his own head occupieth lands or tenements at the will of him which hath the freehold, and such occupier claimeth

* This paragraph is not in L. and M. nor Rob. † est added L. and M. and Rob.

(1) [See Note 238.]

claimeth nothing but at will, &c. if hee which hath the freehold will release all his right to the occupier, &c. this release is void, because there is no privitie betweene them by the lease made to the occupier, nor by other manner, &c.

"De sa teste demense occupia." Hee doth not say, de sa teste demense enter, &c. so as this is to bee under-

stood of a tenant at sufferance, viz. where a man commeth to the possession first lawfully, and holdeth over.

For if a man entrench 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 he is a disseisor (1), and then the release to him is good; or if the owner consented thereunto, then he is a tenant at will, and that way also the release is good. But there is a diversitie 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 over, he is an abator, because his interest came by act in law (2).

Post. 277.) Vide 3 part of the Institutes. Matt. cap. 10. 20 E. 4. 9. 16. (1 Roll. Abr. 662. Ant. 66. a.)

"Nul privitie." Privitie is a word common as well to the English as to the French, and in the understanding of the common law is fourfold.

1. As privities in estate, whereof Littleton here speaketh; as between the donor and donee, lessor and lessee, which privitie is ever immediate.

2. Privities in bloud; as the heire to the ancestor, or betweene coparceners, &c.

3. Privities in representation; as executors, &c. to the testator.

And fourthly, privities in tenure, as the lord and tenant, &c. which may be reduced to two generall heads, privities in deed, and privities in law.

Sect. 462, 463.

ITEM, si home enfoffe autres homes de sa terre sur confidencia, et al intent de performance sa darreine volunt, et le feffor occupiavit semne la terre a la volunt de ses feffors, et puis les feffores relesent per leur fait a leur feffor tout leur droit, &c. ceo ad est un question, si tiel release soit bon ou non. Et aucuns ont dit, que tiel release est voyd, pur ceo que saull privitie fuit perenter les feffores et leur feffor, entant

(1') [See Note 239.]

(2') (See Note 230.)

Also, if a man enfoffe other men of his land upon confidence, and to the intent to performe his last will, and the feffor occupieth the same land at the will of his feffores, and after the feffores release by their deed to their feffor all their right, &c. this hath beene a question if such release be good or no. And some have said, that such release is void, because there was no privitie betweene
Lib. 3. Of Releases. Sect. 463.

must que sul lease fuit fait apres tiel feoffment pur les feoffees al feof- for, a tener a leur volunt. Et as- cans ont dit le contrarie, et ceco per deux causes.

between the feeoffees and their feeof- for, insomuch as no lease was made after such feoffment by the feeoffees to the feoffor, to hold at their will: and some have said the contrarie, and that for two causes.

Sect. 463.

UN est, que quant tiel feoffment est fait sur confedence a performer la volont del feoffor, il sera inten- due per la ley, que le feoffor doit maintenant occupier la terre a la volont de ses feeoffees; et isisont il est tid manner de prouitie entre eux, siisme home fait un feoffment as au- tres, et ils incontinent sur le feoffment voyent et granteront, que leur feof- for occupiera la terre a leur volunt, &c.

ONE is, that when such feoff- ment is made upon confidence to perform the will of the feoffor, it shall bee intended by the law, that the feoffor ought presently to occu- pie the land at the will of his feeoffees; and so there is the like kinde of pri- vitie betweene them, as if a man make a feoffment to others, and they immediately upon the feoffment will and grant, that their feoffor shall occupy the land at their will, &c.

HERE is a question moved, and the reasons of both sides shewed, and as it hath beeene observed, the latter opinion is the better, being Littleton's owne opinion.

" Il sera entendue per la ley que le feoffor doit maintenant oc- cupie la terre a la volunt de les feeoffees." For intendments of law mentioned by our author see the Section in the margent.

Here is to bee observed the intendment of law, that when a feoffment is made to a future use, as to the performance of his last will, the feeoffees shall bee seised to the use of the feo- forf and of his heires in the meane time.

[271. b.] Ipsa etenim leges cubiunt ut jure regantur.

And reason would that seeing the feoffment is made without con- sideration, and the feoffor hath not disposed of the profits in the meane time, that by construction and intendment of law the feof- for ought to occupy the same in the meane time. And so it is when the feoffor disposest the profits for a particular time in pre- senti, the use of the inheritance shall be to the feoffor and his heires, as a thing not disposed of; wherein it is to be observed, that lands and tenements conveyed upon confidences, uses, and trusts, are to be ruled and decided, if question growth upon the confidences, uses or trusts, by the judges of the law; for that it appeareth

12 El. 4. 5 Sc. 6. 15 El. 4. 9 El. 7. 24. Vide Sect. 382. 176. 340.

4 El. 4. 2. 9 El. 7. 24. ultimae. 15 El. 7. 3. b. 14 El. 8. 9. a. Sect. 330. 100. 115. 367. 377. 383. 465. 466. 467. 25 El. 5. Subseco. 32. 15 El. 7. 14. b. 57 El. 4. 34. 11 El. 4. 92. 7 El. 4. 29. 3 Mer. 111. Dies. (0 Rep. 18. 5.)

(Ant. 111 b. 112 a.) (2 Rep. 89.)

appeareth by this and the next Section, they are within the entendement and construction of the laws of the realm (1).

And it is to be observed (as hath been said) that there is a diversitie betwixt a feoffment of lands at this day upon confidence, or to the intent to performe his last will, and a feoffment to the use of such person and persons, and of such estate and estates, as hee shall appoint by his last will: for, in the first case, the land passeth by the will, and not by the feoffment; for after the feoffment 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 uses of the feoffment, and the estates passe by execution of the uses, which were raised upon the feoffment; but in both cases the feoffees are seised to the use of the feoffor and his heires in the mean time: and all this and much more concerning this matter hath beene adjudged.

Note, uses are raised either by transmutation of the estate, as by fine, feoffment, common recoverie, &c. or out of the state of the owner of the land, by bargain and sale by deed indented and inrolled, or by covenant upon lawfull consideration, whereof you may read plentifully in my Reports.

A feoffee to the use of A. and his heires, before the statute of 27 H. 8. for money bargaineth and selleth the land to C. and his heires, who hath no notice of the former use; yet no use passeth by this bargain and sale, for there cannot be two uses in esse, of one and the same land; and seeing there is no transmutation of possession by the terre-tenant, the former use can neither be extinct nor altered. And if there could be two uses of one and the same land, then could not the said statute execute either of them for the uncertaintie. But if A. disesse one to the use (272 A.) of B. and A. doth bargain and sell the land for money to C., C. hath an use; and here be two uses of one land, but of several natures; the one, viz. upon the bargain and sale to be executed by the statute, and the other not.

But since Littleton wrote, all uses are transferred by act of Parliament (2) into possession, so as the case which Littleton here puts is thereby altogether altered. Yet it is necessarie to bee known, what the common law was before the making of the statute, and may serve for the knowledge of the law in like case.

"Incontinent sur le feoffment." Que incontinenti junt in casu
vident.

"A leur volunt, &c." Here is implied, everie tenancie at will is at the will of both parties, as before in his proper place hath beene shewed.

(1) [See Note 231.]
Sect. 464.

A

OTHER cause they allege, that if such land bee worth fortie shillings a yeare, &c. then such feoffor shall be sworn in assise and other enquests in plees reals, and also in plees personals, of what great sumsoever the plaintiff 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 heires ought to occupy, &c. and take and enjoy all manner of profits, issues, and revenues, &c. as if the lands were their own, without interruption of the feoffees, notwithstanding such feoffment. _Ergo_, the same law giveth a privitie between such feoffors and the feoffees upon confedence, &c. for which causes they have said, that such releases made by such feoffees upon confidence to their feoffor or to his heire, &c. so occupying the lands, shall bee good enough: and this is the better opinion, as it seemeth.

Quare, for this seemeth no law at this day.

By the statute of 2 H. 5. cap. 3. statute 2, it is enacted, that, in three cases, he that passeth in an enquest, ought to have lands and tenements to the value of fortie shillings, viz. First, upon triall of the death of a man. Secondly, in plea real betweene partie and partie. And thirdly, in plea personall, where the debt or the dammes in the declaration amount unto fortie markes (1). And it is worth the noting, that the judges that were at the making of that statute did construe it by equitie: for where the statute speaks in the disjunctive debt or dammages, they adjudged that where the debt and damages amounted to fortie markes, that it was within the statute. *Fortescue* [†] saith, _Ubri damna vel debita in personibus actionibus non excedunt quadraginta marcas monetae Angliceae, hinc non requiritur, quod juratores, in actionibus hisjusmodi tantum expendere possint: habebunt tamen terram vel redditum ad valorem competentes, juxta discretionem justitiatorum._ &c. And forasmuch as at the time of the making of this statute, the

* &c. not in L. and M. nor Roh.
† &c. added L. and M. and Roh.

(1) [See Note 232]
the greater part of the lands in England in those troublesome and
dangerous times (when that unhappie controversie betweene the
houses of Yorke and Lancastor was begun) were in use; and the
statute was made to remedie a misciefe, that the sheriff
used to returne simple men of small or no understanding;
and therefore the statute provided that hee should returne sufficient
men: and albeit in law the land was the feoffees, yet for that they
had it but upon trust, and cessy que use toeke the whole profits, as
our author here saith, and in equity and conscience the land was
his, therefore the judges, for advancement and expedite of justice,
extended the statute (against the letter) to cessy que use, and not to
the feoffees (1).

[272 b.]

[3] But note, if a man hath a seelhold pur terme d'auter vie, or
is seised in his wife's right, and is returned on a jerie, yet if after
be he returned, cessy que vie, or his wife die, hee may be chal-
lenged; and so it is if after the returne the lands be evicted.

"Et ece est per le common ley." Here three things are to be
observed. First, that the surest construction of a statute is by the
rule and reason of the common law. Secondly, that uses 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 use, this case holdeth not at this
day; but this latter opinion before that statute was good law, as Li-
littleton here taketh it.

"Meeme la ley done privatitie, &c." Hereof it followeth, that when
the law gives to any man any estate or possession, the law giveth
also a privatitie and other necessaries to the same, and Littleton
concluded it with an illative, ergo, meeme la ley done privatitie, which
is verie observable for a conclusion in other cases.

And the (qvere) here made in the end of this Section is not in
the original, but added by some other, and therefore to be rejected.

Also since Littleton wrote, the said statute of 2 H. 5. is altered:
for where that statute limited fortie shillings, now a latter statute
hath raised it to fourte pounds, and so it ought to be contained in the
venire facias.

Nota, an use is a trust or confidence reposed in some other, which
is not issuing out of the land, but as a thing collaterall, annexed in
privitie to the estate of the land, and to the person touching the land,
scilicet, that cessy que use shall take the profit, and that the terre-
rentall shall make an estate according to his direction. So as cessy
que use had neither juse in re, nor juse ad rem, but only a confidence
and trust, for which he had no remedie by the common law, but for
breach of trust his remedie was only by subhena in chancerie: and
yet the judges, for the cause aforesaid, made the said construction
upon the said statute.

Now how jurors shall be returned, both in common plees, and
also in plees of the crowne, and in what manner evidence shall be
given to them, and how they shall be kept, until they give their
verdict, you may read in Fortescue, and therefore need not to be here
inserted.

(1) See Lord Bacon's reading on the statute of uses, p. 8. accord. edit. 1785.
ITEM, releases solonque le matter en fait, ascum foits ont leur effect per force d'ennlarger l'estate celuy a que le release est fait. Sicome jeo lessa certain terre a un home pur terme des ans, per force de que il est en possession, et puis jeo releessa a luy tout le droit que jeo aye en le terre sans plus parolx mitter enle fait, et deliever a luy le fait, donques il ad estate forsque pur terme de sa vie. Et la cause est, pur ceo que quant le reversion ou le remainder est en un home lequel voile enlarger per son releas l'estate le tenant, &c. il n'avera plus grender estate, mes en tiel manner et forme sicome tiel faffor fuit seisie en fée, et volloit per son fait faire estate a un en certaine forme, et deliever a luy seisin per force de mesme le fait: si en tiel fait de foflement ne soit ascum parol de enterdence, † donques il ad forsque estate pur terme de vie; et issint il est en tiel releases faits per || eux en la reversion ou en le remainder. Cur n'jeco lessa la terre a un home per terme de sa vie, et puis jeco releessa a luy tout mon droit sauns plus dire en le release, son estate n'est my enlarg. Mes si jeco releessa a luy et a ses heires, donques il ad fée simple; et si jeco releessa a luy et a ses heires de son corps engendres, donques il ad fée taile, &c. Et issint il covient de specifier en le fait quel estate celuy a que le releas est fait avera.

ALSO, releases according to the matter in fact, sometimes have their effect by force to enlarge the state of him to whom the release is made. (1) As if I let certaine land to one for terme of yeares, by force whereof he is in possession, and after I release to him all the right which I have in the land without putting more words in the deed, and deliver to him the deed, then hath hee an estate but for terme of his life. And the reason is, for that when the reversion or remaynder is in a man who will by his release enlarge the estate of the tenant, &c. hee shall have no greater estate, but in such manner and forme as if such lessor were seised in fée, and by his deed will make an estate to one in a certain forme, and deliver to him seisin by force of the same deed: if in such deed of foessment 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 reversion or in the remainder. For if I let land to a man for terme of his life, and after I release to him all my right without more saying in the release, his estate is not enlarged. But if I release to him and to his heires, then he hath a fée simple; and if I release to him and to his heires of his bodie begotten, then hee hath a fée taile, &c. And so it behoveth to speeifie in the deed what estate hee to whom the release is made shall have.

IT is a certaine rule, that when a release doth enure by way of enlarging of an estate, that there must be privitie of estate, as betweene lessor and lessee, donor and donee. For if A. make a lease to B. for life, and the lessee maketh a lease for yeares, and after A. releaseth to the lessee for yeares, and his heires, this

* &c—la. L. and M. and Roh.
† &c. added L. and M. and Roh.
† a added in L. and M. and Roh.
‡ per cux not in L. and M. nor Roh.

(1) [See Note 233.]
this release is void to enlarge the estate, because there is no privy
between A. and the lessee for yeares.

If a man make a lease for twenty yeares, and the lessee make a
lease for ten yeares, if the first lessor doth release to the second les-
see, 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 enlarge the estate.

And as privy is necessarie in this case, so privy only is not suf-
icient. As if an infant make a lease for life, and the lessee gran-
teenth over his estate with warranty, the infant at full age bringeth a
dum fuit infra statem, the tenant voucheth his grantor, who enter-
eth into warranty, the demandant releaseth to him and his heires;
here is privitie 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 be inlarged, that hath
not any?

If a tenant by the courtesie grant over his estate, yet he is ten-
ant as to an action of waste, attornment, &c. and yet a release to
him and his heires cannot enure to enlarge his estate that hath no
estate at all.

But if a man make a lease for yeares, the remainder for life, a
release by the lessor to the lessee for yeares, and to his heires, is
good, for that he hath both a privy and an estate; and the re-
lease also to him in the remainder for life and his heires, is good
also.

If I grant the reversion of my tenant for life to another for life,
now shall not I have an action of waste (2): but if I release to the
grantee for life, and his heires, now hee hath the fee sim-
ple, and shall punish the waste done after (1).

It is further to be observed, that to a release that enureth by way
of enlargement of the estate, there is not only required privity, as
hath beene 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 termes
of the life of B. and after release to A. all his right in the land, by
this A. hath an estate for termes of his owne life; for a lease for termes
of his owne life is higher in judgement of law, than an estate for
termes of another man's life.

If a feme covert be tenant for life, a release to the husband and
his heires is good, for there is both privy and an estate in the
husband, whereupon the release may sufficiently enure by way of
enlargement (3); for by the intermarriage he gaineth a freehold in
his wife's right.

"Tout le droit." Vide Sect. 650.

"Pur terme des ans." So it is if a release be made to tenant by
statute staple, or merchant, or tenant by elegit, as hath beene said;
and so likewise to gardeine in chivalrie which holdeth in for the
value, by him in the reversion 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

(2) [See Note 234] (1)[See Note 235]
Of Releases:

If a man make a lease for ten years, the remainder for twenty years, he in the remainder releaseth all his right to the lessee, he shall have an estate for thirty years; for one chattel cannot drown another, and yeares cannot be consumed in yeares.

"Mes si jec release a tuy et a ses heires, &c." Here it is to be observed, that when a release doth enure by way of enlargement of an estate, no inheritance either in fee simple or fee tailie, can passe without apt words of inheritance.

But there is a diversity betweene a release that enureth by way of enlargement of the state and by way of mitter l'estate (2); for when an estate passeth by way of mitter l'estate, there sometime there need not any words of inheritance. As if a joyn 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 l'estate, and not by way of enlargement of the estate, because the husband had a fee simple, and needeth not to have any words of inheritance. So it is if the release had been made to the wife.

(5) If there be three joyn tenants, and one release to one of the other all his right, this enureth by way of mitter l'estate, and passeth the whole fee simple without these words (heires). But if there be two joyn tenants, and the one of them release all his right to the other, this doth not to all purposes enure by way of mitter l'estate, for it maketh no degree, and hee to whom the release is made shall for many purposes be adjudged in from the first feoffor, and this release shall vest all in the other joyn tenant without these words (heires).

But if there be two coparceneres, and the one release all his right to the other, this shall enure by way of mitter l'estate, and shall make a degree, and without these words (heires) shall passe the whole fee simple. And it is to be observed, that to releases that enure by way of mitter l'estate, there must be privicy of estate at the time of the release.

If two coparceneres be of a rent, and the one of them take the ten-tenant to husband, the other may release to her, notwithstanding the rent be in suspence, and it shall enure by way of mitter l'estate, and she may release also to the ter-tenant, and that shall enure by way of extinguishment: but if she release to her sister and to her husband, it is good to be seen how it shall enure.

Littlestone, having now spoken of releases that enure by way of enlargement of the estate, and of releases that enure by way of mitter l'estate, 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 l'estate, some by way of mitter le droit, by way of entrice and feoffment, and some by extinguishment.

(3) [See Note 236.]
ITEM, ascun foits releases urera de mitter, et vester le droit cylg que fait le release a cylg a que le releas est fait. Sicome un home est disseisi, et il releasa a son dissecor tout le droit que il ad, en est cas le dissecor ad son droit, issint que lou son estate adenciait fuit torcious, ore per tel releas il est fait loyal et droiturel.

A LSO, sometimes releases shall caure 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 (1).

"ET il releasa a son dissecor, &c." This releaseth so putteth the right of the dissesee 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.

MES hic nota, que quant home est seisi en fee simple d'ascun terres ou tenements, et un auter voile releaser a luy tout le droit que il ad en mesmes les tenements, il ne besoine de parler de les heires cylg a que le releas est fait, pur cco que il avoit fee simple al temps de releas fait. Car si releas fuit fait a luy * pur un jour, ou pur un heure, cco berroit auxy fort a luy en ley, sicome il ust releas a luy et a ses heires. Car quant son droit fuit ale de luy a un foits per son releas sans ascun condition, &c. a cylg que ad fee simple, il est ale a tous jours.

B UT 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 anoure, 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 condition, &c. to him that hath the fee simple, it is gone for ever.

"IL ne besoine 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 hee that hath a fee simple at

* et a ses heires added L. and M. and Boh.

(1) [See Note 237.]
Lib. 3.  Of Releases.

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 un jour, &c." For the diversitie 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 hour 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, he may release his right in one of them, and yet enter into the other.

[274. b.] "Sans aucun condition, &c." Herein is implied two diversities: first, betwene the quantity of the estate in a right, and the quality thereof; for albeit the disseisee cannot release part of the estate, as hath beene said, yet may he release his right upon condition, as here it appeareth by Littleton [c], and it agreeeth with our bookees.

Also here is another betweene a right, whereof Littleton puteth his case, which is favoured 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 upon condition, the release is good, and the condition void.

What things may be done upon condition is too large a matter to handle in this place, our author having treated of Conditions before: only to give a touch of some things omitted there shall suffice. An expresse manumission of a villeine cannot be upon condition, for once free in that case, and ever free; also an attornement to a grantee upon condition, the condition is void because the grant is once settled. But this is to be understood of a condition subsequent, and not of a condition precedent; for in both those cases the condition precedent is good. But letters patents of denization made to an alien, may be either upon condition subsequent or precedent; and so may the king make a charter of pardon to a man of his life upon condition, as is above said.

Sect. 458.

MES lou * home ad un recession en fee simple, ou un remainder en fee simple, al temps de releas fait, la s’il voyle releaser al tenant pur terme d’ans, ou pur terme de vie, ou al tenant en le taille, il convient a determiner l’estate que celuy a que le releas est fait avera perforce demesme le releas, pur ceo que tel releas enverra pur enlager l’estate de celuy a que le releas est fait †.

But where a man hath a reversion in fee simple, or a remainder in fee simple, at the time of the release made, there if he will release to the tenant for yeares, or for life, or to the tenant in taitale, hee ought to determine the estate which hee to whom the release is made shall have by force of the same release, for that such release shall enure to enlarge the estate of him to whom the release is made (1).

Of this sufficient hath beeene said before.

* home — un, L. and M. and Roh. † &c. added L. and M. and Roh.

(1) [See Note 238.]
M ES autrement est lou home ad
forsque droit a la terre, et n’ad
riens en le reversion ne en le remainder
en fait. Car si tel home releassa tout
son droit a un que est tenant 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 jeo lessa terres || a un home pur
terme de sa vie, si jeo puis release a
luy pur enlarger son estat, il covient
que jeo releassa a luy et a ses heires de
son corps engendar, * ou a luy et a ses
heires, ou per tiels paroles, a avoir et
tener a luy et a ses heires † de son
corps engendres, ‡ ou a les heires
males de son corps engendres, ou tiels
semblables estates, ou autrement il
n’ad plus greinde estat que il avoit
adavant.

(Amt. 395.)

A UN 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 privitie at all is requisite. As if a
disseisor make a lease for life, if the disseeor release to the lessee,
this is good, and directly within the rule of Littleston, because the
lessee hath an estate of freehold, albeit there be no privitie. 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 disseeor to his heire, be-
fore hee doth actually enter, is good.

(Post. 397.)

M ES si mon tenant a terme de
vie lessa mesme la terre ouster a
un auter pur terme de vie de son lessee,
le remainder a un auter en sec, ore si
jeo releassa a celuy a que mon tenant
lessast pur terme de vie, § ceo serra
barre a tous jours, coment que nul
mention soit fait de ses heires, pur ceo
que

1 on tenements added L. and M. and Roh.
* ou not in L. and M. nor Roh.
† males added L. and M. and Roh.
‡ ou a les heires males de son corps en-
gendres not in L. and M. nor Roh.
§ ceo—jeo, L. and M. and Roh.
for that at the time of the release made I had no reversion, but only a right to have the reversion. For by such a release, and the remainder over, which my tenant made in this case, my reversion was discontinued, &c. and this release shall enure to him in the remainder, to have advantage of it, as well as to the tenant for term of life (1).

LITTLETON having before spoken of releases which enure by way of enlargement, by way of mitter l'estate, and 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 Littleton here putteth, the release to the lessee of the lessee doth not enure by way of mitter le droit, for then should he have the whole right, but as it were by way of extinguishment, in respect of him that made the release, and that it should enure to him in the remainder, which is a qualitie of an inheritance extinguished. But yet the right is not extinct in deed, as shall be said hereafter in this chapter.

"Mon reversion fuit discontinuë, &c." Here discontinuë is in a large sense taken for devested, though the entrée of the lessor be not taken away, which is implied in this (&c.)

Sect. 471.

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 tenant were sole seized in his demesne as of fee at the time of such release made unto him, &c.

"SONT case un tenant en ley." Which is certainly true in this case of remainder, and so it is also in case of a reversion; as if a disseisor make a lease for life, and the disseeisee doth release all his right to the lessee, this release shall enure to him in the reversion, albeit they have severall estates, as hath beene said, which is implied in this (&c.).

But if a disseisor make a lease for life, the remainder in fee, albeit they to some purposes (as here is said) are as one tenant in law, yet if the disseeisee release all 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 only to the tenant for life, as it is holden [2] in Edward Aitham's case. And in like manner.

1 &c. not in L. and M. and Roh.
(1) [See Note 239.]

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manner, if the disseisor make a lease for life, and the disseissee release all actions to the lessee, this inureth not to him in the reversion; and so our author is to be understood 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 reversion,

Sect. 472.

ITEM, si home soit disseisie per deux, s'il relessea a un d'euix, il tiendra son compagnion hors de terre, et per tel release il aera le sole possession et estate en la terre. Mes si un disseisor enfeoffa deux en fee, et le disseissee relessea a l'un des feoffees, et o urera a amibeaux de les feoffees, et la cause de diversity entre ceux deux cases est assets preignant. * Pur ceci que ils vegnien eins per feoffment, et l'auters per tort, &c.

ALSO, if a man be disseised by two, if he release to one of them (1), hee shall hold his compaignion out of the land, and by such release hee shall have the sole possession and estate in the land. But if a disseisor infeoff two in fee, and the disseissee release to one of the feoffees, this shall enure to both the feoffees, and the cause of the diversity between these two cases is pregnant enough. For that they come in by feoffment, and the others by wrong, &c.

21 No. 4-41. (Am. 194 b. d.)

"SI home soit disseisie, &c." This is to bee understood 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 inure to him alone, to hold out his companion, for then should the release inure 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 reversion revested in the lessor [6], which strange transmutation and change of estates in this case the law will not suffer. But if lessee for yeares be ousted, and he in the reversion disseised, and the lessee release to the disseisor, [276. a] the disseisee may enter, for the terme of yeares is extinct and determined. But otherwise it is in case of a lessee for life, for the disseisor hath a frechold, 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 done in taile be disseised by two, and releaseth to one of them, it shall enure to them both. But if the king's 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 shall hold out his companion, for the disseisian was but of an estate for life.

If

* The remainder of this Section not in L. and M. nor Roh.

(1)[See Note 240.]
If tenant for life be disseised by two, and he in the reversion and tenant for life joyned in a release to one of the disseissors, he shall hold his companion out, and yet it cannot enure by way of entrie and feoffment. But if they severally release their several rights, their several releases shall enure to both the disseissors.

But here in Littleton's 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 feoffment, 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 only in case of a disseisin, but also in case of intrusion and abatement: but necessarily he to whom the release is made must bee in by wrong, and not by title.

If two men doe gaine an advowson by usurpation, 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 clerk came in by admission and institution, which are judicall acts, they are not merely in by wrong: for an usurpation shall 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 diversitie where the particular estate for life is precedent, and when subsequent.

Where our author putteth his case of one disseised, put the case that two joynenants in fee be disseised by two, and one of the disseissors release to one of the disseissors all his right, he shall not hold out his companion, because the release is but of the moystie, 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 advantage of both the disseissors, because the husband was no wrong doer, but in a manner in by title.

"It avera le sole possession et estate." If two disseissors 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 have the sole possession and estate, for part of the estate is in another.

And so it is (as it seemeth) if the disseissors make a lease for yeres, and the disseisee release to one of them, this shall enure to them both, for by the release he cannot have the sole possession: and it appeareth by Littleton, that he must have the sole possession, and hold his companion out. But the mortgagor upon condition, having broken the condition, is disseised by two, the mortgagor having title of entrie for the condition broken, release to the one disseissor, 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 Littleton's case it appeareth, that wrong is done to him that made the release: secondly, that hee that makes the release hath but a title by force of a condition, and Littleton's case is of a right. Like law of an entrie for mortmaine, or a consent to ravishment, &c.

"Mes si un disseisor infeoffs deux, &c." And the reason of this diversitie is, for that the feoffes are in by title, and are presumed
to have a warrantie, which is much favoured in law, and the dissecors are merely in by wrong. And the equity of the law doth preserve in this case the benefit of the estranger to the release coming in by one joynst title.

"Pur ceo que ils régnoient cins per seoffement, et l'autres per
sors." This is of a new addition, and not in the original, and therefore I pass it over.

Sect. 473.

ALSO, if I bee dissecised, and my dissecor is dissecised, if I release to the dissecor of my dissecor, I shall not have an assise nor enter upon the dissecor, because his dissecor hath my right by my release, &c. And so it semeth in this case, if there be xx. dissecised one after another, and I release to the last dissecor, this dissecor shall barre all the others of their actions and their titles. And the cause is, as it semeth, for that in many cases, when a man hath lawfull title of entrie, although he doth not enter, hee shall defeat all meane titles by his release, &c. But this holds not in everie case, as shall be said hereafter (1).

HERE it is to be observed, 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 putth his case of two estates by wrong, and after of twentie dissecisms, all estates be wrong.

If A. dissecise B. who enfeoffeth C. with warrantie, who enfeoffeth D. with warrantie, and E. disseciseth D. to whom B. the first dissecise releaseth, this doth defeat all the meane estates and warranties, because the release of B. is made to a dissecor, and his entrie is lawfull.

*(Post. 377. b.
77. 8.)
31 H. 6. 41.
11 H. 6. 25.
9 H. 7. 34.
5 B. 4. 16.
51 E. 4. 76.
13 Am. 29.
Vide 3 H. 6. 38.*

*lo—see, L and M. and Roh.
† et not in L. and M. nor Roh.
‡ celuy dissecor—dl. L and M. and Roh.
§ come il semble not in L. and M. nor Roh.

(1) [See Note 241.]

Sect.
Lib. 3. Of Releases. Sect. 474, 475.

Sect. 474.

ITEM, si mon disseisor lessa les tenements dont il moy disseisist a un autre homm pur terme de vie, et puis le tenant a terme de vie aliena en fee, et jeo releessa al alienee, &c. donque mon disseisor ne poit enter, causq qui supra, comment a un foits l'alienation fuit a son disinheritance, &c.

ALSO, if my disseisor letteeth the tenements whereof he disseised mee to another for terme of life, and after the tenant for terme of life alieneth in fee, and I release to the alienee, &c. then my disseisor cannot enter causa quia supra, albeit that at one time the alienation was to his disinheritance, &c.

"ITEM, si mon disseisor lessa, &c." If the disseisor make a lease for life, and the lessee maketh a secoffinet in fee, and the disseisee releaseth to the secoffine, the disseisor shall not enter upon the secoffne; for albeit the release to one joynt secoffine of a disseisor, as hath beene said, shall not exclude the other, yet a release to the secoffine of a tenant for life in this case shall take away the entrie of the disseisor for the alienation which was made to his disseisee.

[277. a.] inheritance, hee having the inheritance by disseisin, so as hee could have no warranty annexed to it, and tenant for life hath forfeited his estate. But if the entrie 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 reversion releaseth to the second disseisor, the first disseisor shall enter upon the second disseisor, and his entry is lawfull; and if the lessee for life re-enter, he shall leave the reversion 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 intende of an estate taile mutatis mutandis.

If, in the case aforesaid, the disseisor make a lease for life, and the lessee secoffeth two, and the disseisee releaseth to one of the secoffnes, this shall barre the disseisor, as hath beene said; but yet hee shall not hold out his companion for the cause aforesaid.

Sect. 475.

ITEM, si home soit disseisie, lequel ad filis deins age et morust, et sitient le filis deins age le disseisor morust seint, et la descendisist a son heir, et un estrange abate, et puis le filis le disseisie, quant il vient a son plein age, releessa tout son droit a l'abator; en est cas heire le disseisor n'averat auter not in L. and M. nor Roh.

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 descend to his heire (1), and a stranger abate, and after the sonne of the disseisee, when hee commeth to his full age, releaseth all his right

(1) [See Note 242.]

n'acera assise de mor-d'ancester en-
vers l'abator, mes serra bar, * pur ceo
que l'abator ad le droit del fis le dis-
seisse per son releas, et l'entry le fis
fuit congeable, † pur ceo que il fuit
deins age all temps del discent, &c.

right to the abator; in this case the
heire of the disseisor shall not have
an assise of mor-d'ancester against
the abator; but shall bee barred,
because the abator hath the right of
the sonne of the disseisee by his re-
lease, 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 entry 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 sense to diminish or take away, as here by his entrice
he diminisheth and taketh away, the freehold in law descended to
the heire; and so it is said to abate an account, signifying sub-
traction or withdrawing, &c. and to abate the courage of a man.
In another sense it signifieth to prostrate, beat downe, or over-
throw, as to abate castles, houses, and the like, and to abate a
writ; and hereof commeth a word of art, abatamentum, which is an
entrie by interposition. Now the difference inter disseisinam, aba-
tamentum, intrusionem, deforciantem, et usurpationem, et pur-
presturam, is this:

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 an 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 upon 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.

Secondly, [o] he that entreth upon any of the king's desemesnes,
and taketh the profits, is said to intrude upon the king's posses-

Thirdly, [p] when the heire in ward entreth at his full
age without satisfaction for his mariage, the writ saith, [277. b.]
quod intruti.

Deforciantem comprehended not only these aforesaided, but
any man that holdeth land whereunto another man hath right, be it
by descent 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
clerke is admitted and instituted, hee is said to bee an usurper, and
the wrongfull act that he hath done is called an usurpation.

Secondly, when any subject doth use, without lawfull warrant,
royall franchises, he is said to usurpe upon the king those
franchises.

Purprestura, or pursprestura, a purpresture. [g] Purprestura
est, &c. generaliter quoties aliquid fit ad noocumentum regis tenementis,
vel regis vicis (vel aliquarum publicarum) vel civitatibus, &c. And
because it is properly when there is a house builded, or an enclosure
made of any part of the king's desemesnes, or of an highway, or a
common

* d'asseiz added in L. and M. and Rob.
† &c. added in L. and M. and Rob.
common street or publike water, or such like publike things, it is derived of the French word *pourpris*, which signifieth an inclosure, but specially applied, as is aforesaid, by the common law.

**Sect. 476.**

MES si *home soit disseise, et le disseisor fuit feoffment sur condition, estasceavoir, de rendre a lui certaine rent, et pur default de payment un re-entre, &c. si le disseisee releasa al feoffee sur condition, uncor coc + n’amendra l’estate le feoffee sur condition; car nient obstant tiel releasa, uncor son estate est sur condition, sicome il fuit devant.

† Et cum hoc concordat opinio omnium justiciariorum, P. 9 H. 7.

HERE the entry of the disseisee is congeable, and yet the release doth not avoid the condition, because the feoffee is in by title, as hath beene said, and may have a warrant (2). And herein our author expresseth a diversite betwenee 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.

But if the feoffee upon condition make a feoffment in fee over without any condition, and 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 upon any express condition, as *Littleton* here puttheth his case, and he may have advantage of the release, because it is not against his owne proper acceptance, as *Littleton* speaketh in the next Section.

But if it be a wrongfull title, such a title, is taken away by a release; as if A. disseised B. to the use 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 never defeat an estate subsequent gained by right, against a single opinion, not affirmed by any other in one of our booke.

* asen added in L. and M. and Roh.
† n’amendra—ne abatera, L. and M. and Roh. ne alterar, Pap. MS. n’avoisera, (1) [See Note 243.]

**Sect.**

Vell. M3.

† This paragraph not in L. and M. nor Roh.

(2) [See Note 24.]

**Sect.**

9 H. 7. 22.

(Sect. 412.)

Lib. 1. c. 147.

Mayoure’s case.

14 H. 6. 18.

per Fort.

(Ann. 271. s. 270. b.)
Sect. 477.

In the same manner it is where a man is disseised of certaine lands, and the disseisor grant a rent-charge out of the same land, &c. albeit the disseisee doth afterwards release to the disseisor, &c. yet the rent-charge remaines in force. And the reason in these two cases is this, that a man shall not have advantage by such release which shall bee against his proper acceptane, and against his own grant. And albeit some have said, that where the entry of a man is congeable upon a tenant, if hee releases to the same tenant, that this shall avail the tenant, as if he had entered upon the tenant, and after enfeofffed him, &c. this is not true in every case. For in the first case of these two cases aforesaid, if the disseisee had entred upon the feoffice upon condition, and after enfeofffed him, then is the condition wholly defeated and avoided. And so in the second case, if the disseisee entereth and enfeofffeth him who granted the rent-charge, then is the rent-charge taken away and avoided, but it is not void by any such release without entrie made, &c.

\[278. \ a.\]

If two disseisors bee, and they enfeofff another, and take backe an estate for life or in fee, albeit they remaine disseisors to the disseisee as to have an assise against them, yet if he release to one of them, he shall not hold out his companion, because their state 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 avoid their owne grant, and by like reason they shall not avoid their owne release, et sic de similibus.

"Come s'il ust enter sur le tenant et luy enfeoffe." Here is another kinde 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 [278. b.] granted by him, it shall not enure by way of entrée and feoffment; for if the disseisee had entered and enfeoffed him, the rent-charge had beene avoided. But it is a certaine rule, that when the entry of a man is congeable, and he releaseth to one that is in by title, (as hereto the feoffee upon condition is) it shall never enure by way of entry and feoffment, either to avoid 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 avoided by the release of the disseisee, it is to be noted, that acts made to the disseisor himselfe shall not be avoyded 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 services, the disseisor shall take advantage of it, and so of estovers to be burnt in the house, and the like law of a warrantie made unto him.

If the heire of the disseisor indow his wife ex assensu patris, and the disseisee release to the disseisor, he shall not avoide 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 unto him, the king shall not have 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 seigniorie is not revived, for betweene the parties the release enures by way of entrée and feoffment as to the land; but not having regard to the seigniorie, and for that the possession was never actually removed or revested from the disseisor, who claimeth under the lord, the seigniorie is not revived. But if the lord and a stranger disseise the tenant, and the disseisee release to the stranger, there the seigniorie by operation of law is revived, for the whole is vested in the stranger which never claimed under the lord: and in that case, if the lord had died, and the land had survived, the seigniorie had beene revived. But if the lord had disseised the tenant, and beene disseised by two, and the disseisee released to one of them, the seigniorie is not revived, because he claimed (as hath beene said) under the lord.
ITEM, si home soit disseisie per un
*enfant * lequel aliena en fee, et
alienae devie seisie, et son heire enter,
estant † le disseisior dels age, orie est
en election ‡ le disseisior d’aver un
briefe ‖ de dum fuit infra etatem, ou
briefe de droit enuers le heire de lalie-
nce, et quel briefe de eux que il estiera,
il doit recover per la ley, § &c. Et
aussi il poit enter en la terre sans aucun
recoverie, et en cest case l’entre le dis-
seisie est tolle, &c. Mes en cest cas si
le disseisie relessa son droit al heire del
alienae, et puis le disseisior porta briefe
de droit enuers l’heire d’alienae, et il
joynye le mis sure le mere droit, &c. le
grande assise doit trouver per la ley,
que le tenant ad plus mer doctrine † que
ad le disseisior, †† &c. pur ceo que le te-
nant ad le droit le disseisie per son re-
lease, lequel est plus aiciant et plus
mere doctrine; car per tiel leas tout le
droit le disseisie passa a le tenant, et
est en le tenant. Et a ceo que ascuns
ont dit, que en tiel case lou home que
ad droit al terres ou tenements (mes
son entrie n’est pas congeable) s’il re-
lessa al tenant ‡‡ tout son droit, &c.
que tiel release urera per voy d’extin-
guishment. Quant a ceo il puit estre
dit, que ceo est ††* voyer quant a celuy
que relessa; car per son release il ad
luy demise ††† quietment de †† son
droit, quant a son person, mes uncore
||| le droit que il avroit bien poit passer
a le tenant per son release. Car
encouvenient serroiet que tiel aiciant
droit serroiet extinct tout ousterment,
&c.

ALSO, if a man bee disseised by an
infant who alien in fee, and the
alienae dieth seized, and his heire
entreteth, the disseisior being within
age, now is it in the election of the
disseisior to have a writ of * dum fuit
infra etatem*, or a writ of right
against the heire of the alienae, and
which writ of them hee shall chuse,
hee ought to recover by the law, &c.
And also he may enter into the land
without any recovery, and in this
case the entrie of the disseisie is
taken away, &c. But in this case if
the disseisie release his right to the
heire of the alienae, and after the
disseisior bringeth a writ of right
against the heire of the alienae, and
hee joynye the mise upon the meere
right, &c. the great assise ought to
finde by the law, that the tenant hath
more meere right than the disseisior,
&c. for that the tenant hath the
right of the disseisie by his release,
the which is the most aiciant and
most meere right: for by such re-
lease all the right of the disseisie
passeth to the tenant, and is in the
tenant. And to this some have said,
that in this case where a man which
hath right to lands or tenements (but
his entrie is not congeable) if he re-
lease 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 re-
lease hee hath dismissed himselfe
quite

* deins age added in L. and M. and Roh.
† le disseisior—l’alieneur in L. and M.
and Roh.
‡ de l’alieneur—d’alieneur L. and M. and
Roh.
§ &c. not in L. and M. nor Roh.
‖ de not in L. and M. nor Roh.
§ &c. not in L. and M. nor Roh.
‖&c. added L. and M. and Roh.
†† voyer—vorie, L. and M. and Roh.
††† quietment, not in L. and M. nor Roh.
—nettement, MSS.
‡‡‡ tout added L. and M. and Roh.
*** &c. added L. and M. and Roh.
†††* voyer—vorie, L. and M. and Roh.
†††† nettement, not in L. and M. nor Roh.
—nettement, MSS.
‡‡‡‡ tout added L. and M. and Roh.
†† le droit que il avoit bien poit passer a le
tenant per son release, not in the Vell. MS.
but omitted most probably through mistake.
Of Releases

\textit{Gentia car it est communemente dit, que} 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 inconvenient that such an ancient right should bee extinct altogether, \&c. for it is commonly said, that a right cannot die.

\textit{QUEL briefe de eux il eslera, \&c.} Note, many times in one case the law doth give a man severall remedies, and of severall kindes, as in this case by action and by entry; by action, either a writ of right, or \textit{dum fuit infra statem}.

\textit{Et puis le disceiusor porta briefe de droit, \&c.} Here it appeareth that there is a great art and knowledge for a man that hath divers remedies to chose his aptest remedie; as in this case, if he bring his writ of right, the disceiusor shall be barred, but if he had entred upon the heire of the alienee, he should have enjoyed the land for ever. For in that case the heire of the alienee after such an entrie shall never have a writ of right, no more then if the disceiusor entred upon the heire of the disceiusor, and make a feoffment in fee, if the heire of the disceiusor re-enter he shall detaine the land for ever, and the feoffee shall not maintaine any writ of right; for a bare right shall never be left in the feoffee, but shall ever follow the possession, as hath beene said: but if the disceiusor entred upon the heire of the disceiusor, and make a feoffment in fee upon condition, and entred for the condition broken before the heire of the disceiusor enter, hee is restored to his right again.

A man maketh a gift in taile, the remainder in fee, tenant in taile dieth without issue, an estranger intrude, and he in the remainder brings a formedon, and recovereth by default, and maketh a feoffment in fee, the intruder reverse the recoverie in a writ of disceit and entrede, he shall detaine the land for ever, and the feoffee shall not have a writ of right.

And so likewise if a disceiusor die seised, and a stranger abate, and the disceiusor release to him, the heire of the disceiusor shall enter and detaine the land for ever. For the right to the possession shall draw the right of the land to it, and shall not leave a right in him to whom the release is made, as hath been said before in the 447 Section.

\textit{Le droit del disceiusor passa al tenant, et est en le tenant.} For seeing the tenant hath the whole fee simple, he is capable of the whole right of the disceiusor, and as \textit{Littleton} here saith, the right is in the tenant.

\textit{Inconvenient serroi.} Here againe, as hath beene often observed, an argument \textit{ab inconvenienti} is forcible in law; and that judges by the authoritie of our author are to judge of inconveniences as of things unlawfull, as hereby and by many other places it appeareth.

\textit{Un droit ne poit pas morier.} Dormit alicuiando \textit{jus}, moritur \textit{nunquam}. For of such an high estimation is right in the eye of the law, as the law preserveth it from death and destruction: trodden downe it may bee, but never trodden out. For where it hath beene

\begin{quote}
\text{(Ant. 45. a.)}
\text{Ver. Sect. 614.)}
\text{22 E. 3. 98.}
\text{9 E. 4. 46.}
\text{21 E. 4. 47.}
\text{41 E. 3. 10.}
\text{3 H. 4. 13.}
\end{quote}

\begin{quote}
\text{(Ant. 265. a.)}
\text{38 E. 3. 15.}
\text{24 H. 8. Restore ar primer actio, 6. Vide Sect. 447.}
\end{quote}

\begin{quote}
\text{9 H. 7. 34.}
\end{quote}

\begin{quote}
\text{9 H. 7. 34.}
\end{quote}

\begin{quote}
\text{Vide Sect. 87. 138, 190. 231. 260. 440. 732.}
\end{quote}
Of Releases.

Sect. 479.

beene said, that a release of right doth in some cases enure by way of extinguishment; it is so to be understood, 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 qualitie of an inheritance extinguished.

As if there be lord and tenant, and the tenant maketh a lease for life, the remainder in feo, if the lord release to the tenant for life, the rent is wholly extinguished, and he in the remainder shall take benefit thereof; even so when the heire of a disseisor is disseised, and the disseisor make a lease for life, the remainder in feo, 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 joyne the mise upon the meere right, it shall be found for him, because in judgment of law he hath by the said release the right of the first disseisee.

Sect. 479.

MES releases que enurea per voy d’extinguishment envers tous persons, sont lou celuy a que le releas est fait, ne poit aver ceo que a luy est releas. Si comme si soyent seignior et tenant, et le seignior releasa al tenant tout le droit que il ad en la seigniory, ou tout le droit que il ad en le terre, &e. telle releus va per voy de extin-

BUT releases which enure by way of extinguishment (1) against all persons are where hee to whom the release is made cannot have 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 have service to receive of himselfe.

HERE Littleton putteth a diversity betweene releases which enure by way of extinguishment against all persons, and whereof all persons may take advantage, 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 have the thing released, and releases which, having 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

* service pour prendre—cro, L. and M. and Rob.

(1) Here Littleton returns to releases by extinguishment. See art. 263.
may receive and take the thing released. And here Littleton putteth cases where releases do absolutely enure by extinguishment without exception, having respect to all persons. And first of the lord and tenant: secondly, of the rent-charge: thirdly, of the common of pasture.

Sect. 480.

First, of the lord and tenant, and the lord release to the tenant his seigniorie, this must of necessity enure by way of extinguishment to all men; for the tenant cannot have service to be taken of himself, nor one man can be both lord and tenant. The second is of a rent-charge; a man cannot have land and a rent issuing out of the same land. Thirdly, a man cannot have land and a common of pasture issuing out of the same land, et sic de ceteris. For in all these cases and the like he to whom the release is made cannot have and enjoy the thing that is released. But in the case of the right of the land, the tenant of the land may take and enjoy it for strengthening his estate therein.

The mesne being a feme enter marrie with the tenant peravaile, if the lord release to the feme, the seigniorie only is extinct; but if the husband, both seigniorie and mesnaltie are extinct. And in this case, if the lord release to the husband and wife, it is a question how the release shall enure; but it is no question but that a release may be made to a mesnaltie or a seignior suspended in part of the estate.

But here observe a diversity where a release enureth by way of extinguishment of an inheritance, which is in possession and may be granted over, and a release of a right, or an action to lands which cannot be granted over [7]. For the lord may release his seigniorie to the tenant of the land for life or in taile, et sic de ceteris. But so cannot one release a right or an action; for if it be released but for an hour, it is extinct for ever, as hath beene said.

And two things are to be observed 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 words of inheritance. If the tenancie be given to a lord and to stranger, and to the heires of the stranger, the lord release to companion all the right in the land, this release doth not onely see his estate in the tenancie, but extinguisheth also his right in the

for extinguishment en toute voys,—touts personnes, L. and M. and Rolh. toute foisz per d'extincionment envers.
en le maner come il demanda, et pur ceco que le seisin del demandant fuit defeat per l'entry de le tenant a terme de vie, &c. donque il ad nut droit en le maner come il demanda.

as he holdeth, than the demandant hath in the manner as hee demandeth, and for that the seisin of the demandant was defeated by the entry of the tenant for term of life, &c. then he hath no right in the manner as he demandeth.

HERE 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 recoveror in this case, for albeit the seisin is defeated betweene the lessee for life and him in the remain-
der, yet having regard to the recoveror, who is a meere stranger, and hath no title, it is sufficient against him. But otherwise it is against the party himselfe that defeated the seisin, and the law is propense to give remedie to him that right hath. And where some have thought, that there is no authority in law to warrant Littleton's opinion herein, they are greatly mistaken, for Littleton hath good warrant for all that he hath written.

Lands are letten to A. for life, the remainder to B. for life, the remainder to the right heirs of A.; A. dieth, B. entreth and dieth; a stranger intrudeth, the heire of A. shall have a writ of right of the seisin which A. had as tenant for life.

Lands are letten to A. and B. and to the heires of A.; A. dyeth; a recovery is had against B.; the heire of A. shall have a writ of right of the whole, for every joyntenant is seised per my et per tout.

If lands be given in tayle, the remainder to A. in fee, the donlye dyeth without issue, his wife privenent enseint, A. entreth, the issue is borne and entreth upon him and dyeth without issue, A. shall have a writ of right of the seisin which he had.

If lands be given in tayle to A. the remainder to his right heires, A. dieth without issue, the collaterall heire of A. shall have writ of right of the seisin of A.

And so note a diversity betweene a seisin to cause possession fratri, &c. for there is required a more actual seisin, and a seisin to maintaine a writ of right. And hereby also are the (&c.) in this Section explained.

Sect. 483.

T'his it may bee said, that these words (modo et forma prout, &c.) in many cases are words of forme of pleading, and not words of substance. For if a man bring a writ of entry in caso proviso, of the alienation made by the 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
trove est per verdict, que le tenant allying en le taille, ou pur terme
d'autre vie, le demanqant recouvrera: encore l'allegation ne fuit en le
manner comme le demanqant avoir declare, &c.

WHERE modo et formâ are of the substance of the issue, and
where but words of forme, this diversity is to be observed.
[c] Where the issue taken goeth to the point of the writ or action,
there modo et formâ are but words of forme, as here in the case of
the writ of entrie in casu proviso, and so is the (ßc.) well explained
in this Section. But otherwise it is when a collarrall point in pleading
is traversed; as if a sefoffment be allaged by two, and this is traversed
modo et formâ, and it is found the sefoffment of one, there
modo et formâ is materiall. So if a sefoffment be pleaded by deede,
and it is traversed abaque hoc quâd s'effaçvit modo et formâ upon this
collerall issue, modo et formâ are so essensiall as the jury cannot
find a sefoffment without deed.

AUXY, si soient seignior et tenant,
et le tenant tient del seignior per
fealtie solement, * et le seignior distreine le tenant pur rent, et le tenant
porta brieve de trespas envers son
seignior de ses avers issint prises, et le
seignior plede que le tenant tient de
luy per fealtie et certain rent, et pur
le rent avre il vient a distreiner, &c.

et demande judgement de brieve
post vers luy quare vi et armis, &c.
et l'auter dit, que il ne tient de luy en
le maner come il suppose, et sur ces sont
a issue, et trove est per verdict que il
tient de luy per fealtie tantum; en
cest case le brieve abatera, et encor le
ne tient de luy en le maner come le
seignior avoit dit. Car le mater de
l'issue est, lequel le tenant tient de luy
ou nemy; car s'il tient de luy, comen
que le seignior distreina le tenant pur
auter services que ne doit aver, encor
le brieve de trespasse, quare vi et
armis, &c. ne gist euvers le seignior
mes serra abate.

ALSO, if there bee lord and tenant, and the tenant hold of the
lord by fealty only, and the lord dis-
itreine the tenant for rent, and the
tenant bringeth a writ of trespass
against his lord for his cattell so
taken, and the lord plead that the
tenant holds of him by fealtie and
certaine rent, and for the rent be-
hinde he came to distreine, &c. and
demand judgement of the writ
brought against him, quare vi et armis,
&c. and the other saith that hee
doeth not hold of him in the manner as
he suppose, and upon this they
are at issue, and it is found by verdict
that he holdeth of him by fealty
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 holdeh of him
or no; if so holdeth of him,
although that the lord distreine the
tenant for other services which he
ought not to have, yet such writ of
trespasse quare vi et armis, &c. doth
not lie against the lord, but shall abate.

"Trovesthat it tient per verdict, que il tient per scaltie tantum."

Here is another diversitie to be observed: That albeit the issue bee upon a collateral point, yet if by the finding of part of the issue it shall appear to the court that no such action lieth for the plaintiff no more than if the whole had been found, there modo et formâ are but words of forme, as here in the case which Littleton putteth of the lord and tenant appeareth.

"Car le matter deli issue est lequel il tient de luy ou nemy, &c."

Here it appeareth, that if the matter of the issue be found it is sufficient. And this rule holds in criminall causes. [282. a.]

For if A. be appealed, or indicted of murder, viz. that hee of malice prepensio killed I. A. pleadeth that he is not guilty modo et formâ, yet the jurie may find the defendant guiltie of manslaughter without malice prepensio, because the killing of I. is the matter, and malice prepensio is but a circumstance.

In assize of darreine presenment, if the plaintiff allege the avoydance of the church by privation, and the jurie find the voydance by death, the plaintiff shall have judgement; for the manner of voydance is not the title of the plaintiff, but the voydance is the matter.

[d.] If a gardeine of an hospitall bring an assise against the ordinary, he pleadeth that in his visitation he deprived him as ordinary, whereupon issue is taken, and it is found that he deprived him as patron, the ordinary shall have judgement, for the deprivation is the substance of the matter.

The lessee covenant with the lessor not to cut downe any trees, and bind himself in a bond of forty pounds for performance of covenants, the lessee cut downe ten trees, the lessor bringeth an action of debt upon the bond, and assigneth a breach that the lessee cutteth down twenty trees, whereupon issue is joined, and the jury finde that the lessee cut downe ten, judgement shall be given for the plaintiff; for sufficient matter of the issue is found for the plaintiff.

Sect. 485.

Auxy, * en breife de trespasse de batterie, ou des biens emportes, si le defendant plede de rien culpable, en le maner come le plaintife suppose, et trove est que le defendant est culpable en auter celle, ou a auter jor que le plaintife suppose, incore il recorera.

Et jour issint en d plusieurs auters cases ceux paroles, seiclet, en le maner come le

* en—ten L. and M. and Roh.
† issint not in L. and M. nor Roh.

Als, in a writ of trespass for batterie, or for goods carried away, if the defendant pleed not guilty, in manner as the plaintiff suppose, and it is found that the defendant is guiltie in another towne, or at another day than the plaintiff suppose, yet hee shall recover. And so in many other cases these words, "viz.

† moltes added in L. and M. and Roh.
le demandant ou le plaintiff ad sup-
pose, ne font aucun * matter de sub-
stance del issue: car en briefe de droit,
lou le mise est joyne sur le mere droit,
il est a tant a dire, et a tiet effect,
silicet, lequel ad plusi mere droit, le
tenant ou le demandant al chose en
demand.

"EN briefe de trespasse de battery, et des biens emports, &c."
Here Littleton speaketh of actions brought for things transi-
tory. In which cases the wrong being done in one towne, the
plaintiff may not only allege it in another towne, as Littleton here
saith, but also in another county, and the jurors upon not guilty
pleaded are bound to find for the plaintiff.

Neither can the assault, battery, or taking of goods, &c. alleged
in another county, be traversed without special cause of
justification which extendeth to some certaine place; as if
a constable of a towne in another county arrest the body of a man
that breaketh the peace, there he may traverse the county (but he
must not rest there) but all other places saving in the towne whereof
be is constable. And so it is of taking of goods, if the defendant
justifie for damage feasant in another county he must traverse as be
fore. But where the cause of the justification is not restrained to a
certaine place, that is so local as it cannot be alleged in any other
towne, as in the cases before alleged, and the like, then albeit the
action bee brought in a foraine countie, yet he must allege his jus-
tification in the county where the action is brought. As if a man be
beaten in the county of Middlesex, and hee bringeth his action in the
county of Buck. the defendant cannot pleade that the plaintiff as-
aaulted him in the county of Midd. &c. and traverse the county, but
he must pleade his justification in the county of Buck. for that the
cause of his justification is good in any place. And so it is in case
of bailement of goods, and other cases for transitory things; as for
example.

In an action upon the case the plaintiff declared for speaking of
slanderous words, which is transitory, and laid the words to be
spoken in London, the defendant pleaded a concord for speaking of
words in all the counties of England, saving in London, and traversed
the speaking of the words in London: the plaintiff in his replication
denied the concord, whereupon the defendant demurred, and judg-
ment was given for the plaintiff. For the court said, that if the
concord in that case should not be traversed, it would follow, that by
a new and subtle invention of pleading, an ancient principle in law
(that for transitory causes of action the plaintiff might allege the
same in what place or county he would) should be subtverted, which
ought not to be suffered; and therefore the judges of both courts
allowed a traverse upon a traverse in that case: and the wisedome of
the judges and sages of the law have always suppressed new and
subtle inventions in derogation of the common law. And therefore

* matter—manner, L. and M. and Rolls
the judges say in one booke [c]. We will not change the law which always hath been used. And another saith [f], It is better that it be turned to a default, than the law should be changed, or any innovation made.

A man did grant a rent, with a new invented clause of distresses, viz. that the grantee should hold the distresses against gages and pledges; and yet by the whole court he shall gage deliverance, for otherwise by this new invention all replevies shall be taken away.

[*] See many other new inventions in derogation of the common law disallowed by the judges, and by the court of parliament.

[8] Where the jury 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 use in these cases, and the better understand our [f] books, when you shall reade them concerning as well locall as transitory things, wherein you shall finde great variety of opinion in our booke.

"Si le defendant plead de rien calvable." This is is a good issue, if the defendant committed no battery at all; but regularly by the common law if the defendant hath cause of justification or excuse, then can he not pleade not guilty, for then upon the evidence it shall be found against him, for that he confesseth the battery, and upon that issue cannot justify it, but he must pleade the speciall matter, and confess and justify 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 justify the same to be done of the plaintifles 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, upon not guilty he cannot give in evidence, that the beasts came thowrow the plaintifles hedges, which he ought to keep, nor upon the generall issue justify by reason of a rent charge, common, or the like.

In dectinie the defendant pleadeth non detinet; he cannot give in evidence that the goods were pawned to him for money, and that it is not paid, but must pleade it; but he may give in evidence a gift from the plaintifie, for that proveth he detaineth not the plaintifie's goods.

[c] So in an action of waste, upon the plea null wast fact, he may give in evidence any thing that proveth it no waste, as by tempast, by lightening, by enemies, and the like; but he cannot give in evidence justifiable waste, as to repair the house, or the like. [c] If one doth waste, and before the action brought the lessee repaired it,
it, and after the lessor bringeth an action of waste, and the lessee pleads quodd non fecit vestum, he cannot give in evidence the especial matter.

If two men be bound in a bond jointly, 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 he be not his sole deed. [f] See in Westpale's case, where a man may safely plead non est factum, and where not, and the former books that treat of that matter well reconciled.


[g] Upon pleni administravit pleaded by an executour, et inventores inter maines, if it be proved that he hath goods in his hands which were the testator's, he may give in evidence that he hath paid to that value of his owne mony, and need not plead it specially. (1)

In an assise, if the tenant plead mut tort mult diseseizin, he cannot give in evidence a release after the disseisein; but a release before the disseisein he may, for then there is no disseisein upon the matter.

In a writ of right, if the tenant joynye the mise upon the meere right, he cannot give in evidence a collaterall warranty; for he hath not any right by it, and therefore it ought to have been pleaded.

Of this learning you shall read plentifully in our books; and in my Reports. This little taste shall here suffice to make the reader capable of the rest. Regularly whosoever a man doth any thing by force of a warrant or authority, he must plead it. But all that hath been said must be under two cautions: first, that whosoever a man cannot have advantage of the special matter by way of pleading, there he shall take advantage of it in the evidence. For example, the rule of law is, that a man cannot justifie in the killing or death of a man; and therefore in that case he shall be received to give the especial matter in evidence, as that it was se defendendo, or in defence of his house in the night against thieves and robbers, or the like.

Secondly, that in any action upon the case, trespassse, battery, or of false imprisonment against any justice of peace, major, or bailiff of city or towne corporate, headborough, port-reve, constable, tithingman, collector of subsidy or fifteen, in any his majesty's 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 side or assistance, or by their commandement, &c. they may please the generall issue, and give the speciall matter for their excuse or justificacion in evidence.

In an action of trespassse or other suit against any person for taking of any distressse or other act doing by force of the commission of sewers, the defendant in any such action shall and may make avowry, conusance, or justificacion generally, that it was done by authority of the commission of sewers for lotte or taxe assessed by that commission, &c. and the plaintifie shall reply he did it of his owne wrong without such cause. And both these acts were made for avoiding of prolixity and captiousnesse of pleading, tending to

(1) [Set Ntbe 245.]
Lib. 3. Cap. 5.

Of Releases.

Sect. 489—491.

"Judgement final." The forme whereof you shall see in the last Section of this chapter.

"Que serra encounter reason." Argumentum ab inconvenienti.

Sect. 489.

Et saches, mon fils, que en briefe de droit, apres ceo que les quater chivalers ont estie le grand assise, donques il n'ad plus grender delay que en un brief de formedon, apres ceo que les parties sont a issue, &c. Et si le mise soit joyne sur le battaille, donques il ad meindre delay.

Post. Vict, b.) "Battaille." See for this word in the last Section of this chapter.

(3 Rep. 104.) "Issue, &c." Or demurrer, which is an issue in law.

Sect. 490.

Item, release de tout le droit, &c. en aucun case est true, fait a ec-
luy que est suppose tenant en ley, co-
ment que il n'ad riens en les tenements.
Si comme en precipe quod reddat, si le tenant aliena la terre pendant le briefe, et puis le demandant releessa a lay tout son droit, &c. cel release est true, pur ceo que il est suppose d'entre tenant per le suit del demandant, et encorre il n'ad riens en la terre al temps de release fait.

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 precipe quod reddat, if the tenant alien the land hanging the writ, and after the demandant releaseth to him all his right, &c. this release is [284. b.] good, for that he 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.

En mesame le manner est si en pre-
cepe quod reddat le tenant vouche, et le vouchee entre en le guar-
rantie, siapres le demandant-releasa al vouchee tout son droit*, cee est assents bone,
Bone, pur ceo que le vouchee apres ceo que il avoit enter en le garrantie, est tenant en ley al demandant, † &c.

HERE it doth appeare, that there is a tenant in deed and a tenant in law, and Littleton in this and the next Section putth two examples of tenants in law, viz. [A] the tenant to a praecipe after alienation, and of the vouchee, whereof somewhat hath been said before.

And it is observable, 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 entered into warranty, and become tenant in law, an ancestor collaterall of the demandant releaseth to the vouchee with warranty, he shall not plead this against the demandant, for that the release by the estranger is void, which, besides the authorities before vouches, appeareth by Littleton himselfe ; * for he saith, that he is tenant in law to the demandant, whereby he excludeth that he is tenant in respect of any estranger.

Sect. 447. * vi. devant Sect. 442. (Ant. 366. ii. 273. a)

Sect. 492.

ITEM, quant al releases d’actions, reals et personals, il est issint, que aucun actions sont mixt en le reality et en le personalitie: sicome un action de waste sue envers tenant a terme de vie; est action est † en le reality, pur ceo que le lieu waste serra recover; et auxy en le personalitie, pur ceo que treble damages seront recoveres par le tortious waste fait per le tenant; et pur ceo en est action un releas d’actions reals est bon plee en barre, et issint est un releas d’actions personals.

Also, as to releases of actions, reals and personals, it is thus. Some actions are mixt in the reality and in the personalty: as an action of waste sued against tenant for life; this action is in the reality, because the place wasted shall be recovered; and also in the personalty, because treble damages shall be recovered 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.

nota, there be two kind of actions, viz. one that concern the pleas of the crowne, placita corona, or placita criminalia; another that concerne common pleas, placita communia, seu civilia. 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), real, personal, and mixt. Placitorum alius personae, alius realis, alius mixtus. Or, Actionem quadem sunt in rem, quaedam in personam, et quaedam mixtae. And generally, actio is defined, [f] Actio nihil alius est quam jus prosequendi in judicio quod sibi debetur. Or, Action n’est auter chose que loyall demande de son droit.

[²85. a]  

† &c. not in L. and M. nor Roh. 
‡ en not in L. and M. nor Roh. 

Glac. R. 1. ca. 1. 
Flet. b. 1. ca. 1. 
lib. 15. 
Mort. 3. fo. 1. 
Bract. lib. 1. sub 
Flet. 11. ca. L. 

(Plo 484)

[F] Vide Sect. 
444. Bract. 
lib. 3. fol. 99. 
Plet. lib. 1. cap. 18. 
Mi ror cap. 2. § L 

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[6] 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.

"Tenant fur vie." And so it is if it be brought against tenant for yeares, because it agreeeth with the reason of Littleton here rendered, viz., that the place wasted shall be recovered, and therefore soundeth in the realty.

"Auxy en le personaltie, per eco que treble damages terra recovers," which doe sound in the personaltie. Wherefore Littleton concluded, 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 observed a diversity betwixt the act of the party, and 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 given to the lessee, wherein he shall recover two things, viz. the place wasted, and treble damages: in this case if the lessee release all actions reals, he shall not have an action of waste in the personalty only; and if he release all actions personals, he shall not have an action of waste in the realty only.

[7] And so it is if the lessee doth waste, and after surrendrith to the lessor his estate, and the lessor accept thereof, the lessee shall not have an action of waste.

But by act in law the nature of the action may be changed; as if a man make a lease fur terme d'aunter vie, and the lessee doth waste, and then cessy que vie dyeth, an action of waste shall lye for damages only, because the other is determined by act in law.

And againe, hereupon is another diversity to be observed, that in case when an action is well begun, and part of the action determined by act in law, and yet the like action for the residue is given, there the writ shall not abate, but proceed. But where by the determination of part the like action remaineth not for the residue, there the action well commenced shall abate. As if an action of waste be brought against tenant fur terme d'aunter vie, and hanging the writ cessy que vie dyeth, the writ shall not abate, but the plaintiff shall recover damages only, because if cessy que vie had died before any action brought, the lessor might have an action of waste for the damages. So if an ejectione firme be brought, and the termine incurreth hanging the action, yet the action shall proceed for damages only, because an ejectione doth lye after the terme for damages only. But if tenant fur aunter vie bring an assise, and cessy que vie dyeth hanging the writ, albeit the writ were well commenced, yet the writ shall abate, because no assise can be maintainable for damages only.

So if an action of waste be brought by baron and fem in remainder, in especial tayle, and hanging the writ the wife dieth without issue, the writ shall abate, because every kind of action of waste must be ad exheredationem.

If a writ of annuity be brought, and the annuity determineth hanging the writ, the writ faileth for ever, because no like action can be maintained for the arrerages only, but for the annuity and arrerages.

But
But where damages only are to be recovered, there albeit by act in law the like action lyeth not afterwards, yet the action well commenced shall proceed; [m] as if a conspiracy be brought against two, and one of them dyeth hanging the writ, it shall proceed.

And in an assise of novel disseisin, a writ of annuity, quare impedit, and other mixt actions, (1) a release of actions reals is a good plea, and so it is of a release of actions personals.


But if three joynentants 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 plaintiff; for having regard to them the reality shall bee preferred, et omne majus trahit ad se minus dignum. [n] And in a writ of ward brought by two, the release of the one shall not grieve the other, but shall enure to his benefit, for he shall recover the whole ward, and hold his companion out.

But here a diversity is to be observed betweene reall actions wherein damages are to bee recuperate at the common law, as in an assise, &c. and reall actions where damages are not to be recovered by the common law, but are given by the [o] statute, for there a release of all actions personals is no barre, as in the writ of dower, entre sur disseisin in le per, &c. mord'anc', siet, &c.

[285. b.] * Sect. 493.

ET en quare impedit, un releas d'actions personals est done ploc, et assisst est un releas d'actions reals, per Martin, quod fuit concessum. Hill. 9 H. 6. 57.

T HIS is an addition to Littleton, which although it be law, and the booke truly cited, yet I passe it over. 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.

ETnowe le maner est en assise deno-
vel disseisin, per ceo quil est mixt en le realite et en le personalty. Mes si un tiel assise soit arraigne enter le

IN the same manner it is in an assise of novel disseisin, for that it is mixt in the realtie and in the personalty. But if such an assise bee arraigned

* * This Section is not in L. and M. nor Roh.

(1) [See Note 246.]
le disseisor et le tenant, le disseisor bien poit pleder un releas d'actions personales pur barrer l'assise mes nemy un releas d'actions reals, car nul pledera releas d'actions reals en assise forseque le tenant.

arraigned 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.

"L E disseisor bien poit pleder, &c."

Nota, every 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 plea a release of actions personals, because damages are to be recovered against him, and therefore for his defence hee may plead it; but a release of actions reals he cannot plead (1), 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 ceteris. But the tenant in an assise shall plead a release of actions personals to the disseisor, for that plea proveth that the plaintiff hath no cause of action against him.

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 privie to the release, for a release of actions shall only extend to privies.

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 remainder shall not plead the said release.

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 have an action [r], as some have said. And hereby may appeare a manifest diversity between a release of a right, and a release of actions.

If the disseisor et le tenant, le disseisor bien poit plede un releas de actions personales pur barrer l'assise mes nemy un releas de actions reals, car nul pledera releas de actions reals en assise forseque le tenant.

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(1) [See Note, 247.]
ment al temps del releas, fait, car adonque il n'avoit cause d'avoir aucun action real envers luy.

plead the plea had nothing in the freehold at the time of the release made, for then he had no cause to have an action real against him.

THIS is evident enough by that which hath beene said, that a release of all actions reals must bee made to him that is tenant of the land, because a real action must be brought against such a tenant.

Sect. 496.

ITEM, en tel cas ou home poit enter en terres ou tenements, et auxy poit aver un action real de ceo, que est done per la ley envers le tenant*; si en cest case le demandant releasa al tenant tout maners de actions reals, uncoere ceo ne tolle le demandant de son entrée, mes le demandant bien poit enter nient constisteant tel releas, pur ceo que nul chose est releasa forsque l'action, &c.

ALS0, in such case where a man may enter into lands or tenements, and also may have an action real for this, which is given by the law against the tenant; if in this case the demandant releaseth the tenant all manner of actions reals, yet this shall not take the demandant from his entrée, but the demandant 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 [2] bookes. But where his entry is not lawful, there a release of all actions is by consequency a barre of his right, because he hath released the mean whereby he might recover his right. As if the disseisee release all actions to the heire of the disseisor, which is in by descent, he hath no remedy to recover the land; but yet the disseisee hath a right, for that hee hath released his action, and not his right, as shall 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 he dieth, the survivour shall not plead this release for the causes aforesaid. And hereby also again appeareth another diversity betweene a release of a right, and a release of actions.

[268. b.] It is to be observed, when a man hath severall remedies for one and the selfe same thing, be it reall, personall, or mixt, albeit he releaseth one of his remedies, he may use the other.

* &c. added L. and M. and Boh.
Lib. 3. Cap. 8.  

OF Releases.  

Sect. 497.  

EN same manner is it of things personal; siccome home a tort pret mes biens, si jco release a lay touts actions personalis, sence jco puisse per le ley prendre mes biens hors de son possession.

IN the same manner is it of things personal; as if a man by wrong take away my goods, if I release to him all actions personalis, yet I may by the law take my goods out of his possession.

This of itself is evident.

Sect. 498.

AUXY, si jco ay* ascun cause d'auter briefe de detinue de mes biens vers un autre, coment que jco release a lay touts actions personalis, sence jco puisse † per le ley prendre mes biens hors de son possession, per cee que nul droit de les biens est release a lay, mes solament l'actien, &c.

ALSO, if I have any cause to have a writ of detinue of my goods against another, albeit that I release to him all actions personalis, 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.

BRIEF de detine.* Breve de detencione dicitur a detinendo, because detinere is the principal word in the writ. And it lyeth where any man comes to goods eyther by delivery, or by finding. In this writ the plaintiff shall recover the thing detained, and therefore it must be so certaine as it may be knowne, and for that cause it lyeth not for mony out of a bagge, or chest; and so of corne out of a sacke, and the like, these cannot be knowne from other. [*] A man shall have an action of detinue of charters which concern the inheritance of his land if hee know the certainty of them, and what land they concern, or if they be in bagge sealed, or chest locked, though he knoweth not the certainty of them: and it is good policie (if possibly he can) in that case to declare of one charter in especiall, [x] 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 severance 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 personalis in a writ of detinue of charters is a good bare.

* ascun not in L. and M. nor Roh.
† per le ley not in L. and M. nor Roh.
ITEM, si homo sovit disseisire, et le
disseisor fait seoffment a divers
persons a son use; et le disseisor con-
tinualment prist les profits, &c. et le
disseisir releisa a luy toutes actions
rauls, et puis il suist vers luy brece
d'entre en nature d'assise per cause de
le statut, pur ceo que il prist les pro-
fits, &c. Quere, comment le disseisor
sera aide par le dit releas; car s'il
voile pleder le releas generalment,
donques le demandant poit dire, que il
n'avoit riens en le frauktenement al
temps del releas fait; et s'il pleda
releas specialment, donques il covient*
constre un discesisin, et donques poit
le demandant enter en le terre, &c. per
son consans de le disesisin, &c. mes
peradventure per special pleader
il luy poit barrer de l'action † que il
suist, &c. comment le demandant poit
enter.

"PER cause del statute." That is to say, the statute of 4 H.
4. ca. 7. and 11 H. 6. ca. 4.

"Car s'il volet pleder le releas generalment." Here it appeareth,
[287. a.] that when the statute had given the action reall against the
pernor of the profits, it enableth him to take and pleade a
release of all actions reals, and yet he hath neither jus in re, nor jus
ad rem, which point is worthy of observation for manifestation of the
equity of the law.

"Donques il covient constre un discesisin, &c." In a writ of
dower the tenant pleaded that before the writ purchased A. was
seised of the land, &c. until by the tenant himselfe hee was dis-
seised, and that hanging the writ A. recovered against him, &c.
judgment of the writ, and adjudged a good plea, in which plea the
tenant confessed a disseis in himselfe.

"Donques poit le demandant enter." So might hee have done in
this case that Littleton putteth, albeit the tenant confessed no dis-
seisin. And therefore it is no prejudice to the tenant to confess a
disseis in himselfe, &c. and then, as Littleton here holdeth, the
action shall be barred.

But

† &c. added L. and M. and Roh. † gua suist, &c. not in L. and M.
"de added in L. and M. and Roh. nor Roh.
But the reader is to observe, that now by the statute of 27 H. 8. 6 & 7. 10. which execute the possession to the use, all the statutes against cestui que use, or pernor of the profits, have lost their force.

Sect. 500.

A LSO, if a man sue an appeal of felony of the death of his ancestor against another, though the appellant release to the defendant all manner of actions real and personal, this shall not aide the defendant, for that this appeal is not an action real, in as much as the appellant shall not recover any realtie in such appeal: neither is such appeal an action personal, 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 shall be a good barre in an appeal. And so a man may see that a release of all manner of actions is better than a release of actions real and personal, &c.

OUR author having spoken of common pleas, now treateth of certaine pleas criminal, or pleas of the crown, whereof it is said, [a] Item, criminalium alia majora, alia minora, alia maxima, accedunt crimina quantitatem; sunt enim crimina majora et duntur capita le ci quod ultimum inducunt supplication, &c. Minora verò, qua justificationem inducunt, vel peram pittoralem, vel tumboroalem, vel carceris inclusionem, &c.

[8] Criminalium quaedam sententialiter mortem inducunt, quadam verò minimè. [c] De poche est breie divison, car est mortal ou venial solonque ceo que appiert es paines. And that crime is called mortal or corporall: mortal, because it deserveth death; and such crimes are called venial, as may be redeemed or satisfied by some other punishment than by death.

"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] ancient booke he that doth appeale is called accusator, and is peculiarly in legall signification applied to appeals 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 only of the death of her husband to be prosecuted. The third is of wrongs done to the appellants themselves, as robbery, rape, and mayhem. The word appelium is derived of appellor, to call, because appellans vocat reum in judicium, he calleth the defendant to judgement, and the plaintiff is called the appellant.

"Appeale;"

"Appeale," Appellatio, is a removing of a cause in any ecclesiastical 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 man's will, and with malice prepensede or forethought. Homicide, as it is legally taken, is when one is slaine with a man's will, but not with malice prepensede. Chance-medly, or per infortunium, is when one is slaine casually, and by misadventure, without the will of him that doth the act, whereupon death insueth; but of this no appeale doth lye. Murder commeth of the Saxon word mordreu.

Were is an old Saxon word sometime written werra, and signifies the price of the life of a man, estetitio capitis, that is, so much as one paid for the killing of a man; by which it appeareth, that such government was in those dayes, as slaughters of men were most rareely committed, as master Lambard collecteth. And you shall not reade of any insurrection or rebellion before the Conquest, when the view of frankpledge and other ancient lawes of this realme were in their right use.

"Mes s'il release al defendant toutes manieres d'actions, &c." And the reason is, for that then all actions, as well criminall as reall, personall and mixt, be released. But a release of all actions reall and personall cannot barre an appeale of death, because that release extendeth to common or civil actions, and not to actions criminales; but releases of all actions criminales or mortall, or concerning pleas of the crowne, are good barres in an appeale of death, and so the (etc.) in the end of the Section is well explained.

[288. a.] Sect. 501.

ITEM, en appeale de robererie, si le defendant voile pleader un release de l'appellant de toutes actions personales, cec semble nul plee; car action de l'appeale, lou l'appellee aura judgement de mort, &c. est plus haut que action personal est, et n'est pas propermente dit action personal: et per cec si le defendant voilouit plead un release del appellant de barrer luy d'appeale, en cest case il conviint d'avoir un release de toutes manieres * d'appeale, ou toutes manieres d'actions, comme il semble, &c.

ALSO, in an appeale of robererie, if the defendent will plead a release of the appellant of all actions personales, this seemeth no plea; for an action of appeale where the appellee shall have judgment of death, &c. is higher than action personal is, and is not properly called an action personall; and there if the defendent will plead a release of the appellant to barre him of the appeale, in this case hee must have a release of all manner of appeals, or all manner of actions, as it seemeth, &c.

ROBBERIE." Roboricia, properly is when there is a felonious taking away of a man's goods from his person: and it is 'ed robery, because the goods are taken as it were de la robe, from

* Emended added L. and M.

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W. 1 cap. 39.

from the robe, that is, from the person; but sometimes it is taken in a larger sense.

"Judgement de mort, &c." By this (&c.) is implied appeals of rape, of arson or burning, of felony or larceny, for therein also is judgment of death, and are within our author's reason.

"Come il semble, &c." It is to be understood, that, first, a release of all actions criminal, mortal, or concerning pleas of the crown; secondly, a release of all actions generally; thirdly, a release of all appeals; and lastly, a release of all demands, are good barres in all these kinds of appeals.

Sect. 502.

MES en appeale de maihem un release de tousm manners d'actions personals est bone plece en barre, par cco que en tield action il ne recouvera forsque damages, &c.

MAYHEM "mahemium, membris muslilatio, or obrustation, from the word melaigne, and signifieth a corporall hurt, whereby hee loseth a member, by reason whereof hee is lesse able to fight; as by putting out his eye, beating out his fore-teeth, breaking his skull, striking off his arme, hand, or finger, cutting off his legge or foot, or whereby he loseth the use of any of his said members.

"Damages, &c." Vide Sect. 194.

Release de tousmanners actions personals est bone pleca, &c.

And the reason is, for that every action wherein damages only are recovered by the plaintiff, is in law taken for an action personal.

Sect. 503.

ITEM, si home soit vilage en action personal per process sur le original, et port brece d'error, si celuy a que suit il fuit vilage, voile pleader encorx luy un releas de tous manvers d'actions personals, cco semble nul plece; car per le dit action il ne recouvera rien en personallitie forsoyte tantsolement de recerver il vilageaire: mes un releas de briefe d'error est bone plea.

ALSO, if a man bee outlawed in an action personal by process upon the original, and bringeth a writ of error, if he at whose suit he was outlawed will pleade against him a release of all manner of actions personal, this seemeth no plea; for by the said action hee shall recover nothing in the personaltie, but only to reverse the outlawrie: but a release of the writ of error is a good plea.

"BRIEFE
"BRIEF de error." This writ lyeth when a man is grievèd by any error in the foundation, proceeding, judgment, or execution, and thereupon it is called breue de errore corrigendo. But without a judgment, or an award in nature of a judgment, no writ of error doth lie; for the words of the writ be, si judicium redditum sit: and that judgement must regularly be given by judges of record, and in a court of record, and not by any other inferior judges in base courts, for thereupon a writ of false judgment doth lye. In this case of outlawry upon processe, the judgement is given (in the county court, which is no court of record) by the coroners (saving in London judgement is given by the recorder, and not by the mayor, who is coroner by the custom of the city): for after the defendant is quinto exactus, and maketh default, the judgement is, ideo uttagetur per judicium coronatorum; and in London, per judicium recordatoris: so as by the outlawry the plaintiff recovers nothing, but the king taketh the whole benefit thereof; for the law did intend, that the defendant would rather appear and answer the plaintiff, &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 sheriff doe returne the exigent whereby the outlawry appeares of record, or that the outlawry be removed by certiorari, for before that time that the outlawry appeare of record, the defendant doth not forfeit his goods, nor the plaintiff can be disabled, nor any writ of error doth lye in that case. And this is the cause that the goods of outlawtie cannot be claimed by pre- scription, because they are not forfeited untill the outlawy appeare of record. Vide Sect. 197. where it appeareth by Littleton, that the plaintiff cannot be disabled by outlawry, unless it appeareth of record.

"Car per le dit action il recovera rien en le personaltie." Here- upon is to be observed a diversity, when by the writ of error the plaintiff shall recover, or be restored to any personal thing, as debt, damage, or the like; for then by the reason that Littleton here yeeldeth, the release of all actions personals is a good plea, for that the plaintiff is to recover, or to be restored to something in the personality. And so, likewise when land is to be recovered, or to be restored in a writ of error, a release of all actions reals a good barre. But where by a writ of error the plaintiff shall not bee restored to any personal or reall thing, then a release of all actions reall or personal is no barre; and therefore Littleton here putteth his case with great caution. If a man (saith he) by processe upon the original be outlawed, there in deed he shall be restored to nothing in the personality against the plaintiff. But where by the outlawy 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 ability to sue, &c. But if the plaintiff, in a personal action, recover any debt, &c. or damages, and be outlawed after judgement, there in a writ of error brought by the defendant upon the principall judgement, a release of all actions personals is a good plea. And so it is where a judgement is given in a reall action, a release of all actions reals is a good barre in a writ of error brought thereupon.

If the tenant in a reall action release to the demaundant after recovery his right in the land, he shall not have a writ of error, for that he cannot be restored to the land.

And
And so it is if debt, &c. or damages be recovered in a personal action by false verdict, and the defendant bringeth a writ of attainct, a [a] release of all actions personal is a good barre of the attainct; for thereby the plaintiff is to be restored to the debt, &c. or damages which he lost; the like law is if a judgement be given upon a false verdict in a real action, a release of all actions real is a good barre in an attainct. For both the writ of error and the writ of attainct doe issue the nature of the former action, &c.

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 personal is a good barre, because he is to discharge himselfe of a personal execution.

"Mea un release de briefe de error est bona plea, &c." So as in this special case here put by Littleton, wherein the plaintiff is to recover or be restored to nothing against the party; yet for that the plaintiff in the former action is privy to the record, a release of a writ of error to him is sufficient to barre the plaintiff in the writ of error of the suit, and vexation by the writ of error. And so note that an action real or personal doth imply a recovery of something in the reality or personality, or a restitution to the same, but a writ (1) implyth neither of them, which is worthy of observation.

Sect. 504.

ITEM, si home recovera debt ou damages, et il relesa al defendant toouts maners d’actions, uncere il puit loialment sur execution per capias ad satisfaciendum, ou per elegit, ou fieri facias: car execution per tial briefe ne poit estre dit action.

ALSO, if a man recover debt or damages, and he 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 upon such a writ cannot bee said an action.

HERE appeareth a diversity beweteene an action and an execution. For regularly an action is said in its proper sense to continue until judgement bee given, 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 originnall writ, and doth determine by the judgement; and writs of execution are called judiciall, because they are grounded upon the judgement.

"Per cap. ad satisfaciendum." This is a judiciall writ for the taking of the body in execution untill hee hath made satisfaction: where a capias ad satisfaciendum lyeth at the common law; and where it is given by statute you may reade at large in my Reports.

I have read two ancient records touching the taking of the body in execution, whereof, to my remembrance, I never read any touch

(1) That is, a writ of error.
Of Releases.

touch in our bookes, yet will I recite them, and leave them to the judicious reader. William de Walton brought an action of trespass of breaking his close against John Martin, and upon not guilty pleaded, hee was found guilty and damages assessed; whereupon judgement was given that the plaintiff should recover his damages, et quod predictus Johannes captatur. And the record saith, Quod predictus Johanne venit coram dominio rege et reddidit e priscione, et quia consent curiat per inspectionem corporis suis Johannis, quid idem Johannes est talia statis quod eum praejudicium suprema non potest, idcirco dictum est ci, quod eae inde sine de. The other record is, That Ellen Allot brought an appeale of robbery against John Boakleskete clercke, Richard Charta, and others, who pleaded not guilty, and were not found guilty: whereupon judgement was given that they should goe quite, et predicta Elena pro falso afftaulo suo committatur prissone, &c. (for [b]) by the statute she ought to be imprisoned in that case for a yeare. But the record saith, Quia eadem Elena pregnae sit, et in periculo mortis, sua dimititur per manumissionem, &c. ad habendum corpus usque quind. Michaelis, &c. (2).


"Per elegit." This is also a judicall writ, and is given by the statute ether upon a recovery for debt or damages, or upon a recognizance in any court. And it is called a writ of elegit, for that according to the statute that saith, [c] Sit de catedrd in eleccione illius, &c. sequi breve quod viccomes fieri faciat, &c. vet quod liberet e, &c. The words of the writ be Elegit sibi liberari, &c. And thereupon it is called an elegit. By this writ the sheriff shall deliuer to the plaintiff omnia catalla debtoris (exceptis bonis & afris curvis) et mediatam terre. And this must be done by an inquest to be taken by the sheriff.

When Littleton wrote, by force of certaine acts [d] of parliament, execution might bee had of lands (besides by force of the elegit) upon statutes merchant, statutes staple, and recognizances taken in some court of record; and since he wrote, upon a recognizance or bond taken by force of the statute [e] of 23 H. 8. before one of the chief justices, or the mayor of the staple, and recorder of London out of terme, which hath the effect of a statute staple. The manner of the executions upon body, lands, and goods, appeareth in the statutes quoted in the margin.

Since Littleton wrote, a profitable statute hath been made [f] concerning executions of lands, tenements, and heriditations, whereby it is provided, that if after such lands, &c. be had and delivered in execution upon a just or lawfull title, wherewithall the said lands, &c. were liable, tied, or bound at such time, as they were delivered or

(2) The record at large is stated in 12 Rep. fol. 126.
or taken into execution, shall be recovered, devested, taken, or evicted out of, or from the possession of any such person, &c. before such times, as the said tenants by execution, their executors or assigns, shall have fully levied their debt and damages, for the which the said lands, &c. were taken in execution; then every such recoveror, obligee, and recognizee, shall have a seire 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 heirs, executors or assigns, to have execution of other lands, &c. liable and to be taken in execution for the residue of the debt or damages. Sed optimus est interfretae.

Therefore, first, it is to be knowne, that where the tenant by execution hath remedy given to him by law after eviction, there the statute extendeth not to it; for the act saith, by reason whereof the said recoverors, obligees, and recognizees, have been clearly set without remedy, &c. and the body referreth to the preamble, and the party ought not to have double satisfaction, one by the former laws, and another by this statute.

And therefore if part of the land, &c. be evicted 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 evicted saving one acre to hold that, though it be but a poore remedy: for no new execution in that case hee can have upon this statute. Therefore if the comusee hath remedy in praesentis 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 have no aide of the statute, because after the extent of A. B. shall re-enjoy the land, by force of his former execution.

Thirdly, if the wife of the comusor recover dower against the tenant by execution, he shall hold over, and shall have no aide 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 over, and have no aide of this statute.

Fifthly, This statute must not be taken literally, but according to the meaning; therefore where the letter is until he, &c. or his assignes shall fully and wholly have levied the whole debt or damages; if he hath assigned several parcels to several assignes, yet all they shall have the land but till the whole debt be paid.

Sixthly, where the words be, for the which the said lands, &c. were delivered in execution. A disseisor conveys lands to the king, who granteth the same over to A. and his heirs to hold by fealty, and twenty pound rent, and after granteth the seigniory to B. B. knowlegeth a statute, and execution is sued of the seigniory. A. dieth without heirs, and the comusee entereth,[290. a.] and is evicted by the disseisee; he shall have the aide of this statute; and yet it is out of the letter of the law, for the seigniory was delivered 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 evicted is out of the statute, for he is tenant in fee simple thereof, and not tenant by execution.

Seventhly, Where the words be (delivered and taken in execution); yet if after the liberate, the comusee entereth (as he may) so as
the land is never delivered, yet he is within the remedy of this statute, for he is tenant by execution.

Eighthly, Where the statute saith, then every such recoveror, obligee, and recognize shall, &c. and saith not, their executors, administrators, or assigns, but they are omitted in this material place, yet by a benigne interpretation this statute shall extend to them, because they are mentioned in the next precedent clause of the eviction, and the remedy must by construction be extended to all the persons that appeare by the act to be grieved; a point worthy the observation.

Ninthly, Where the statute giveth a seire 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 evicted shall have a seire fac' by the equity of this statute out of that court, because the seire fac' must be grounded upon the record. Et sic de similibus.

Tenthly, Where the statute giveth the seire fac' against such person or persons, &c. that were parties to the first execution, their heires, executors or assigns, &c. this must not be taken so generally as the letter is; for if the first execution were had against a pur- chaser, &c. so as nothing was liable in his hands but the land recovered; if this land be evicted from tenant by execution, no seire fac' shall be awarded against him, his heires, executors, or assigns. But if he hath other lands subject to the execution, then a seire fac' lyeth against him or his assigns, but not against his executors; neither in that case can he have a seire fac' upon this statute against the first debtor or recognizor, because it giveth it onely against him, &c. that was party to the first execution, his heires, executors, or assigns. But if there be several assigns of several parcels of lands subject to the execution, one seire fac' upon this statute shall lye against all the assigns. Sed est modus in rebus. This little taste shall give 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. cafh. 6. it is provided, that the obligee, &c. shall have in every point against such recognizor, &c. like proces, execution, commodity and advantage in every behalf, as hath been had or made upon the statute staple, and under such maner and forme, as is for the same statute staple provided: by force of which branch, if the tenant by execution by force of the act of 23 H. 8. be evicted, he shall have the remedy provided for tenants by execution upon 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 upon a statute staple, &c. doe extend the lands, &c. at too high a rate, the obligee may pray that the extendors themselves 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.

But note, that upon a writ of elegit the plaintife cannot make any prayer, because those ancient statutes doe extend to a statutechant, or a statute staple only, and neither to a recovery of debt damages, nor to a recognizance in court; and so it hath been said. [f].

Viz. a, it appeareth by the preamble of the said act of 32 H. 8. by divers [g] bookes, that after a full and perfect execution had
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had by extent returned and of record, there shall never be any re-
extent upon any eviction; but if the extent be insufficient in law,
there may go out a new extent.

If a man have a judgement given against him for debt or da-
mages, or be bound in a recognizance, and dieth his heir within
age, or having 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 [2]; and so
against an heiire within age no execution shall be sued upon a statute
merchant or staple, nor upon the obligation or recognizance upon
the statute of 23 H. 8. for it is excepted in the proces against the
heiire. Neither if the heiire within age in dow his mother shall exe-
cution be sued against her during his minority (1).

Note, that by the statute [k] of 27 E. 3. the execution of lands
upon a statute staple is referred to the statute merchant, and by the
statute De Mercatoribus no execution shall be had against the heiire
so long as he is within age.

Also since Littleton wrote, there is a right profitable statute'[l]
made against fraudulent seoffments, gifts, grants, &c. judgements
and executions, as well of lands and tenements, as of goods
and chattels, to delay, hinder, or defraud creditors and
others of their just and lawful actions, suites, debts, damages, penal-
ties, forfeitures, heriots, mortuaries, and releases, for the exposition
of which and other statutes, see the authorities quoted in the
margent (1).

And it is to be observed, 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
remedy of this act, by reason of this word (declared); whereby it
appeareth what the law was before the making of this act. But
let us now returne to Littleton.

"Fieri facias." This is a writ mentioned in the said statute,
but is a writ of execution at the common law. And it is called a
fieri facias, because the words of the writ directed to the sheriff
be, queri fieri facias de bonis $ et catallis, &c. and of those words
the writ taketh its 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 upon a judgement for debt, &c. or damages, but only when the
original action was quare vi et armis, &c. But latter statutes
have given a capias ad satisfac' where debt, &c. or damages are
recovered; as it appeareth at large [m] in sir William Herbert's
case, whereunto I referre the reader.
Lib. 3.  

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Sect. 505.

And it is to be observed, that these three writs of execution ought to be sued out within the yeare and the day after judgement; but if the plaintiff sueth out any of them within the yeare, he may continue the same after the yeare until he hath execution. And to none of these writs of executions the defendant can pleade; but if he hath any matter since the judgement to discharge him of execution, he may have an auditia querela, and relieve himselfe that way, but pleade he cannot. As if the plaintiff after release unto the defendant all executions, yet in none of these three writs he shall pleade it, but is driven to his auditia querela, as hath been said.

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MES si apres l'an et jour le plaintifte voit suer un scire facias,
* a sacher si le defendant poit rien
dir pur que le plaintifte n'auera execution,
donque il semble que tel releas de tous actions servra bonne place
en barre. Mes ascus ou semble contrary, entant que le briefe de scire facias est un briefe d'execution, et est
d'auer execution, &c. Mes uncuns entant que sur meus le briefe le
defendant poit pleader divers matters
puis le judgment rendue de luy auster
d'execution, come utlagary, &c. et
divers auters matters †, ceo bien poit
estre dit action, &c.

"SCIRE facias." This is a judicall writ, and properly lyeth after the yeare and day after judgement given; and is so called, because the words of the writ to the sherrife bee, quod scire facias pro easi" T. (being the defendant) quod sit coram, &c. ostensiurs
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 be a judicall writ, yet because the defendant may thereupon pleade, this scire facias is accounted in law to bee in nature of an action; and therefore if 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 given in this case by the statute of W. 2. for at the common law if the plaintiff had succeeded to sue execution by fieri facias, or levare facias, a yeare and a day, hee had been driven to his new original.

"Ceo bien poit estre dit action." Here is to be observed, that every writ whereunto the defendant may plead, be it original or judicall, is in law an action.

* a sacher si le defendant poit rien dier pur
* &c. not in L. and M. nor Roh.
w le plaintifte n'auera—d'auer, L. and M. &c.
† &c. added L. and M. and Roh.

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ET jeo croy, que en un seire facias hors d’un fine, un releas de toute manners d’actions est bon plece en barre.

AND I take it that, in a seire facias upon a fine, a release of all manner of actions is a good plea in barre.

This upon that which hath been said, is evident of it self.

Sect. 507.

MES lou home recovra debt ou damages, et est accorde preterer eux que le plaintiffe ne suera execution, donques il covent que le plaintiffe fait un releas a luy de toute maners d’executions.

BUT where a man recovereth debt ou damages, and it is agreed betweene them that the plaintiff shall not sue execution, then it behoveth that the plaintiff make a release to him of all manner of executions.

"IL covent." Albeit Littleton here saith, hee ought or must, &c. yet there bee other words which will release an execution without express words of a release of execution.

As if a man release all suites, the execution is gone ; for no man can have 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 king’s case the judges 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 diversity between a release of all actions, and a release of all suites.

So if the body of a man be taken in execution, and the plaintiff 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 duty it selfe is discharged.

In the same manner if execution be sued upon a recognizance by elegit, and the consuec by deed make a defeasance, that if the consuec doth such an act, that then the recognizance shall be voide ; by this the execution is discharged.

So it is if judgement be given in an action of debt, and the body of the defendant is taken in execution by a capias ad satisfaciendum, and after the plaintiff releaseth the judgement, by this the body shall be discharged of the execution.

If the plaintiff after judgement 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 upon the account is incertaine; and albeit the Latine word is debita, yet duties doe extend to all things due

† ne suera execution=serroit suite d’action, &c. added L. and M.
L. and M. and Rob.
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due that is certaine, and therefore dischargeth judgements in personal actions, and executions also.

[291. b.]

Sect. 508.

ITEM, si home relesa a un auter
touts manners* de demands, ceo
est le plus metier release † a hue a que
le release est fait ‡ que il poet aver,
et plus serra a son avantage. Car
per tiel release de tous manners § de
demands, tous manners d’actions reals,
personals, et actions d’appeale, sont
ales et extincts, et tous manners
d’executions sont ales et extincts.

ALSO, if a man release to another
all maner of demands, this is
the best release to him to whom the
release is made, that hee can have,
and shall enure most to his advan-
tage. For by such release of all
manner of demands, all maner of
actions reals, personals, and actions
of appeale, are taken away and ex-
stint, and all manner of executions
are taken away and extinct.

“TOUTS manners de demands.”

“Demande.” Demandum, is a word of art, and in the under-
standing of the common law is of so large an extent, as no other
one word in the law is, unless it be clameum, whereof Littleton mak-
eth mention, Sect. 445. And here is to be observed, that there
bee two kinde of demands or claimes, viz. a demand or claim in
deed, and a demand or claime in law; or an expresse, and an im-
plied demand or claime. Littleton here putteth examples of both:
and first he speaketh of real actions, wherein hee that bringeth his
action maketh his demand, and therefore hee is properly called a
demandant; and hee that defendeth is called tenant, because hee is
tenant of the freehold of the land.

Of demands implied, or in law, Littleton putteth examples: First,
of all actions personals: secondly, of appeales: for in both those
cases he that bringeth the suit is called plaintiff, and not demand-
ant, and he that defendeth is called defendant. Thirdly, of exec-
cutions. Fourthly, of title or right of entry, eyther by force of a
condition, or by any former right, which meerey is a demand or
claime in law; but otherwise it is in the king’s case. Fifthly, of a
rent service, rent charge, common of pasture, &c. which also are
meere demands or claimes in law. (1) 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
seek, all mixt actions, a warranty which is a covenant real, and all
other covenants, real and personal, estovers, all manner of com-
mons 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 dis-
charged (2).

* de not in L. and M. nor Roh.
† a hue—que celuyg. L. and M. and Roh.
‡ que il, not in L. and M. nor Roh.
§ de not in L. and M. nor Roh.

(1) [See Note 250.] (2) [See Note 251.]
Sect. 509.

ET si home ad title de entry en
ascuns terres ou tenements, per
tiel release son title est ale.

"Sed quære de hoc; car Fitz-
James chiefe justice de Engleterre
tiennent le contrary, pur cego que entre ne
poit proprement entre dit demande,
P. 10 II. 8*.

AND if a man hath title of entry
into any lands or tenements, by
such a release his title is taken away.

Sed quære de hoc; for Fitz-James
chiefe justice of England holdeth the
contrary, because an entry cannot
bee properly said a demand.

"TITLE." Here title is taken in the largest sense,
including right also. [292. a.]

* "Sed quære, &c." This is an addition, and no part of Lit-
tleton, and the opinion here cited cleerely against law.

Sect. 510.

ET si home ad rent service ou rent
charge, ou common de pasture,
&c. per tiel release de toutes maners
de demands fait au tenantz de la
terre dont le service ou le rent est issu-
ant, ou en † que le common est, le
service, le rent, et le common, est ale
et extinct, &c.

AND if a man hath a rent service
or rent charge, or common of
pasture, &c. by such a release of all
manner of demands made to the ten-
ants of the land out of which the
service or the rent is issuing, or in
which the common is, the service,
the rent, and the common, is taken
away and extinct, &c.

This upon that which hath been said, needeth no further explication.

Sect. 511.

ITEM, si home releessa a un aiter
toutes manners de quarrels, ou
toutes controversies ou debates entre
eux, &c. quære, a quel matter et a
quel effect tiels parolis soy extendont,
&c.

ALSO, if a man releaseth to an-
other all manner of quarrels, or
all controversies or debates be-
tweene them, &c. quære, to what
matter and to what effect such words
shall extend themselves, &c.

"QUARRELS." Querela, à querendo. This properly concern-
eth personall actions, or mixt, at the highest; for the plaintife
in them is called querens, and in most of the writs it is said,
querritur.

This paragraph not in L. and M. nor
Roh.

† que—quelle terre, L. and M. and Roh.
Of Releases.

queritur. And yet if a man release all quercies (a man's deed being taken most strongly against himself) it is as beneficial as all actions; for by it all actions, real and personal, are released. And by the release of all quarrells, all causes of actions are released thereby, albeit no action be then depending for the same.

"Quarrel." Controversies and debates are synonyma, and of one signification. *Litis nomen omnem actionem significat, etsi in rem, etsi in personam 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 saith, in recordo et processu, &c. loquela que fuit inter, &c. And so the writ of false judgement saith, recordari facias loqualem, where the judgement was given in the county court. *Omnes actiones seeme to be large words; for exactio derivatur ab exigendo, and exigere signifieth to enquire or demand.*

Sect. 512.

ITEM, si home per son fait soit obliga a un auer en certaine summe de money, a payer al feast de S. Michael prochein ensuant, *si le obligee devant le dit feast releessa al obligor tous actions, il servra barre al duite a tous temps, et encore il ne puisse avor action al temps de release fait.*

ALSO, if a man by his deed bee bound to another in a certain summe of money, to pay at the feast of Saint Michael next ensuing, if the obligee before the said feast release to the obligor all actions, he shall be barred of the duty for ever, and yet hee could not have an action at the time of the release made.

[292. b.] "RELESSA al obligar tous actions, &c." The reason of this case is, for that the debt is a thing consisting meerely in action; and therefore albeit no action lyeth for the debt, because it is debitem in presenti, quamvis sit solvendum in futuro, yet because the right of action is in him, the release of all actions is a discharge of the debt it selfe. [2] And so may an executor before probate release an action; and yet before probate he can have no action, because the right of the action is in him, and so it was adjudged. And some say, that an ordinary may release an action, and yet he can have none. But if a man by deed doth covenant to build an house or make an estate, and before the covenant broken, the covenantee releaseth to him all actions, suits, and quarrels, this doth not discharge the covenant it selfe, because at the time of the release, nihil fuit debitem, there was no debt or duty, or cause of action in being. But in that case a release of all covenants is a good discharge of the covenant before it be broken.

* &c. added L. and M. and Boh.
Sect. 513.

**Mes si home lessa terre a un auter per terme d’un an, rendant a luy al feast de S. Michael prochein ensuedant 40s. et puis devant mesmo le feast il releassa al lesseey totus acts, uncore apres mesmo le feast il avera act de debt par non payment de les 40s. nient obstanti le dit releas. Stude causam diversitatis enter les deux cases.**

**But if a man letteth land to another for a year, to yeeld to him at the feast of S. Mich. next ensuing 40s. and afterwards before the same feast he releaseth to the lessee all actions, yet after the same feast he shall have an action of debt for the non payment of the 40s. notwithstanding the said release. Stude causam diversitatis between these two cases.**

"**RELEASE totus actions.**" This release shall not barre the lessor of his rent, because it was neither debitum nor solvendum at the time of the release made; for if the land be evicted from the lessee before the rent become due, the rent is avoide; for it is to be paid out of the profits of the land, and it is a thing not meerely in action, because it may be granted over. But the lessor before the day may acquite or release the rent. But if a man be bound in a bond or by contract to another to pay a hundred pounds at five several daies, he shall not have an action of debt before the last day be past: and so note a diversity betweene duties which touch the reality, and the meere personality. But if a man be bound in a recognizance to pay a hundred pound at five several days, presently after the first day of payment he shall have execution upon the recognizance for that summe, and shall not tarry till the last bee past, for that it is in the nature of severall judgements. And so note a diversity between a debt due by recognizance, and a debt due by bond or contract. And so it is of a covenant or promise, after the first default an action of covenant, or an action upon the case doth lie, for they are severall in their nature. Lastly, note a diversity between debts and covenants, or promises.

If a man hath an annuity for term 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 meerey in action, because it may be granted over.

Sect. 514.

**ITEM, ou home voile suer briefe de droit, il covient que il couta del seisin de luy, ou de ses ancestors, et auxy que le seisin fuit en temps de mesmo le roy,**

**Also, where a man will sue a writ of right, it behoveth that he counteth of the seisin of himselfe, or of his ancestors, and also that the seisin**
roy, come il counta en son count. Car cest un ancient ley use, come apperint per le report d'un plee en le eire de Nottingham*, titulo Droit en Fitzherbert, cap. 26. en tiel forme que ensuist. John Barre port son briefe de droit encvers Reynold de Assington, et demaundata certaine tenements, &c. † ou le mise es joyn en le bank, et origina et le proces fueront demandes devant justices errants, ou les parties viendraont, et les ‡ 12 chivalers fieron lour serement sans challenge des parties, d'estre allowes, pur cego que election fuit fait per assent des parties, oux les quater chivalers, et le serement fuit tiel: Que jeo verity dirre, &c. lequel R. de A. ad plus mere droit a tener les tenements que John Barre demanda vers luy per son briefe de droit, ou John de aver eux, sicome il demaund, et 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 bataille, et § en ley gager, car eux mitton trescun chose a fine. Mes John Barre counta del seisin d'un Rafe son ancester en temps le roy Henry, et Reynolde sur le mise joyne tendist demy mark pur le temps, &c. Et sur cego Herle, justice, dit al grand assise, apres cego que ils fueront charges sur le mere droit, Vous gentes, Reynold donast demy marke al roy pur le temps, ‡ al entent que si † vous trouvez que l'ancester ** John ne fut pas seisin en le temps que le demaundant ad count †† vous n'enqueries plus avant del droit; et pur cego nous vous dires, lequel l'ancester John, Rafe per nosme, fut seisin en temps le roy Henry, come il ad count, ou non. Et si vous trouves que il ne fut seisin en cel temps, vous n'enqueries nient plus; et si vous trouves seisin was in the same king's time, as he pleadeth in his plea. For this is an ancient law used, 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 certain lands, &c. where the mise is joyned in banke, and the original and the processe were sent before the justices errants, where the parties came, and the twelve knights were sworn without challenge of the parties, to be allowed, because that chosie was made by assent of the parties, with the four knights, and the oath was this: That I shall say the truth, &c. whether R. of A. hath more meere right to hold the tenements which John Barre demandeth against him by his writ of right, or John to have them, as hee 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 every thing to an end. But John Barre counted of the seisin of one Rafe his ancestor in the time of king Henry, and Reynold upon the mise joyned teniret halfe a marke for the time, &c. And hereupon Herle, justice, said to the grand assise after that they were charged upon the meere right, You good men, Reynold gave halfe a marke to the king for the time, to the intent that if you find that the ancestor of John was not seised in the time that the demaundant hath pleaded, you shall enquire no further upon the right: and for this, you shall tell us, whether the ancestor of John (Rafe

* titulo Droit en Fitzherbert, cap. 26. not in "and M. nor Roh.
† ou not in "and M. nor Roh.
‡ 12 not in "and M. nor Roh.
† 1 ne—joe, "and M. and Roh.
§ en—le, "and M. and Roh.

** al entent—et cego sort, "and M. and Roh.
†† vous—home, "and M. and Roh.

in MSS.

in MSS.
troves que il fuit seise, donques en-
quires ouster del * briefe. Et puis
le grand assise reviendroit ove lour
verdict, et disont, que Rafe † ne fuit
pas seise en temps le roy H. per que
fuit agard que Reynold tiendrait les
tenements vers luy demandes, a luy
et ses heires quitte de John Barre et
tes heires a remnant. Et John en le
mercie, &c. Et le cause pur que jeo
aye monstre icy a toyt, mon fys, cest
plee, est, pur prouver le matter prece-
dent que est dit en briefe de droit, &c.
car il semble per cest plee, que si Rei-
nold n’avoit pas tendue demy marke
pur enquirer del temps, &c. donques
le grand assise dussoit estre charge
tantsolement del mere droit, et nemy
del possession, &c. † Et: issint que
toute foits en briefe de droit, si le
possession donit le demandant counta
soit en temps le roy, comme il avoit
counte, donques le charge del grande
assise serra tantsolement sur le mere
droit, coment que le possession fuit
encounter le ley, comme il est dit ade-
vant en cest chapter, &c.

(Ralf by name) were seised in king
Henry’s 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 fur-
ther of the writ. And after the
grand assise came in with their ver-
dict, and said, that Ralf was not
seised in the time of king Henry,
whereby it was awarded that Rei-
nold should hold the tenements de-
manded against him, to him and his
heires quito of John Barre and his
heires to the remnant. And John
in mercy, &c. And the reason why
I have shewed to thee, my son; this
plea, is, to prove the matter prece-
dent which is said in a writ of right;
for it seemeth by this plea, that if
Reynold had not tendered the halfe
marke to enquire of the time, &c.
then the grand assise ought to be
charged onely to enquire of the
meere right, and not of the posses-
sion, &c. And so always in a writ
of right, if the possession whereof
the demandant counteth bee in the
king’s time, as hee hath pleaded, then the charge of the grand assise
shall be only upon the meere right, although that the possession were
against the law, as it is said before in this chapter, &c.

(ant. 379. a.)
For the time of
limitation, see
the statute of
33 H. 3. cap. 2.
Vide Sect. 170.
(9 Rep. 63.
Rok. 140.)
F. N. B. 30. a.
E. 3. 27.
Littl. 113. a.

I L covient que il counta del seisin del luy ou de ses ancestors.
For if neither hee nor any of his ancestors were seised of
the land, &c. within the time of limitation, he cannot maintain a writ
of right; for the seisin of him of whom the demaundant himselfe
purchased the land, &c. avalleth not.
And so it is in a writ of right of advowson.

Auxy que le seisin fuit en temps de meeme le roy comme il
counta.” Hereby it appeareth, that not onely a seisin (as hath
beene said) is requisite, but also that the seisin be had in the time
of the same king, according to his count.

Report, communeth of the Latine word Reportare, a re et porto,
id est, referre, a re et fero. And in the common law it signifieth
a publike relation, or a bringing againe to memory cases judicially ar-
gued, debated, resolved, or adjudged in any of the king’s courts of
justice, together with such causes and reasons as were delivered by
the judges of the same; and in this sense Littleton useth the word
in this place.

En

* briefe—droit, L. and M. and Roh.
† re, not in L. and M. nor Roh.
‡ Et not in L. and M. nor Roh.
"En le sire de Nottingham." Eire, Iter. And it signifieth the court of the justices in eire, and thercupon they were called justitiarit itinerantes, in respect that the justices residing at Westminster were called justitiarit residentes, and were much like in this respect to the justices of assise at this day, although for authority and manner of proceeding (whereof you shall reade [27] in the ancient authors of the law) farre different. And as the power of the justices of assises by many acts of parliament and other commissions increased, so these justices itinerant by little and little vanished away. And it is certaine, that the authority of justices of assises itinerant through the whole realme, and the institution of justices of peace in every county being duey performed, are the most excellent means for the preservation of the king's peace, and quiet of the realme, of any other in the Christian world.

"De Nottingham." This should bee Northampton, according to the original.

This report whereof Littleton here maketh mention, you shall finde an abstract of it in 3 E. 3, since Littleton's time, put in print by Fitzherbert when he was serjant in 11 H. 8. and is not in the Reports or booke at large. And yet here it appeareth, that they be of great authority, and vouch'd by Littleton himselfe for the proofe of a marine point in law. And hereby it also appeareth how necessary it is to reade records and pleas reported or recorded, though they were never printed. For those and the like records are veritatis et vetustatis vestigia.

"Tit. droit in Fitzherbert, 26." is of a new addition, and therefore though it bee true, yet not to bee allowed.

"Et le original et le proces fuera demande devant justices itinerantes." For it is to be understood that all pleas either in the realty or personalty that were begunne and not determined before justices in eire, were adjourned by them into the court of common pleas.

"Les 12 chivalers fieront leur serement sansa challenge, &c. par ce que le elecution fuisfait per assent des parties oue les 4 chivalers." Here are foure things to be observ'd.

First, that omnis consensus tollit errorem, and against his owne consent he cannot challenge the twelve.

Secondly, that the foure knights electors of the grand assise are not to be challenged, for that in law they bee judges to that purpose, and judges or justices cannot bee challenged. And that is the reason that noblemen, that in case of high treason are to passe upon a peere of the realme, cannot be challenged, because they are judges of the fact, and the Magna Charta saith, per judicium partium suorum.

Thirdly, that the twelve before any assent may be challenged before the foure knights electors, but after assent or return of the pannell before the justices, there shall be no challenge to the pannell nor to the polles.

Forthly,

Fourthly, if there be not foure knights for electors in that county, the next to them in that county shall be taken; ne curia regis defecerit in justitiis exhibenda.

"Sauna dire a lour estient:" And here it appeareth, that where the judgement is finall, there the oath of the grand assise or jury is absolute, and not to their knowledge, as here in the writ of right, in the attaint, and in wager of law, for the judgement in every of these three is finall.

"Le mise est joynez." Mise is a word of art appropriated only to a writ of right, so called because both parties have put themselves upon the meere right to be tried 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 sense Littleton taketh it here. But in a writ of right if a collaborall point is to be tried, there it is called an issue; and is derived of this word (museum), because the whole cause is put upon this point. It is also taken for expenses, as mise & custodia. And sometime it signifies a customary grant to the king, or lords marchers of Wales by their tenants at their first coming to their lands.

"Tender di marke al roy." Master Lambard saith, that mencusa & marca Saxonicæ Mancus. 7. Meare' Nummus 30 volens denarios. And this meare, now called a marke, being an old Saxon word, is the cause that England most commonly reckoned by markes. Libra Saxonicæ est a pondo, a pondo, which is called so untill this day. Solidus, qui sulp nos est pars libera vicesima, denarios per id temporis contineat quinque, nunc duodecim; and quarter is a Saxon word, and with us used to this day. Penny, Saxonicæ pennig. Latinæ denarii; but the value of these have not been always one.

In a writ of right of advowson brought by the king, the tenant shall not tender the di-marke, because nullum tempus occurrit regi; and therefore the king shall alledge, that hee or his progenitor was seized, without shewing any time.

"En attaint." Attincta is a writ that lyeth where a false verdict in court of record upon an issue joynd by the parties is given. And of ancient writers it is called breve de convictione; and is derived of the participle tinctus, or attinctus, for that if the petty jury be attainted of a false oath, they are stained with perjury, and become infamous for ever; for the judgement at the common law in the attaint importeth eight great and grievous punishments. 1. Quod amittat liberam legem imperpetuum, that is, he shall be so infamous as he shall never be received to be a witness, or of any jury. 2. Quod foris faciant omnia bona & catalla sua. 3. Quod terre et tenementa in manus domini regis capiantur. 4. Quod usurre & libri extra domus suas ejicerentur. 5. Quod domus sua prostrarentur. 6. Quod arbores sua exterminentur. 7. Quod prata sua arenetur. Et 8. Quod corpora sua carceri mancipentur. So odious is perjury in this case in the eye of the common law, and the severity of this punishment is to this end, ut finas ad fauces, metus ad omnes perveniat; for there is misericordia puniens, and there is crudescentia faciem. And seeing all tryals of reall, personall, and mixt actions depend upon the
Of Releases.

the oath of 12 men, prudent antiquity inflicted a strange and severe punishment upon them, if they were attainted of perjury.

But since Littleton wrote, a statute hath beene made in mitigation of the severity of the common law, in case when the petite jury is attainted, and therefore it is taken by equity. For where the statute saith, that the party grieved shall have an attaint against the party which shall have judgement upon the verdict, yet an attaint shall be maintained upon that statute against the executors of the party. Et sic de similibus. [a] But see the statutes and authorities quoted in the margin. Only I thought good to observe three things.

First, that no attaint can be maintained upon this statute but between party and party.

Secondly, that no comansance can be granted upon any attaint, because all attains are to be taken either before the king in his beach, or before the justices of the common place, and in no other courts, &c.

Thirdly, consider what pleas may be plead in an attaint by force of this act, and what not.


"En battaille," Duellum, monomachia, and it signifieth in the common law a tryall by single fight, by batttle or combate, monomachia (1). [5] And in the writ of right neither the tenant or demandant shall fight for themselves, but find a champion to fight for them: because if either the demandant or tenant should be slaine, no judgement could be found for the lands or tenements in question. But in an appeale the defendant shall fight for himselfe, and so shall the plaintiff also; for there if the defendant be slaine, the plaintiff hath the effect of his suite, that is, the death of the defendant; the order and solemnity whereof may reade in our ancient and latter bookees. And this the law did institute when the tenant failed of his witnesses, or evidences, or other proofs; and the presumption of law is, that God will give victory to him that hath right.

"Ley gager," Vadiare legem; and there is also facere legem, by making of his law. That is, to take an oath (for example) that bee oweth not the debt demanded of him upon a simple contract, nor any penny thereof. And it is called wager of 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 give give such a special benefit to the defendant to barre the plaintiff for ever in that case [7]. But he ought to bring with him eleven persons of his neighbours that will avow upon their oath, that in their consciences he saith truth, so as he himselfe must bee sworne de fidelitate, and the eleven de credulitate.

[295. a.]

(1) Upon this subject, see 3 Black. ch. 32. sect. 3. and 6. and the notes to the 1st vol. of Dr. Robertson's History of Charles the Vth.—The reader will also find some curious and interesting particulars upon this head, in Pero le Brun, Traitez de quelques pratiques superstitieuses qui ont seduit le peuple, et embarrasses les evacuans.
And wager of law lieth not when there is a specialty, or deed to charge the defendant, but when it groweth by word, so as he may pay or satisfi the partie in secret, whereas the defendant having no testimony of witnesses may wage his law, and thereby the plaintiff is perpetually barred, as Littleton here saith; for the law presumeth that no man will forswear himself for any worldly thing; but mens consciences doe grow so large (specially in this case passing with impunity) as they choose rather to bring an action upon the case upon his promise, wherein (because it is trespassure sur le case) hee cannot wage his law, than an action of debt.

A man outlawed or attained in an attain, or upon an inordinate process, or of perjury, or otherwise, whereby he become infamous, shall not wage his law.

A man under the age of 31 yeares shall not wage his law; but a feme covert, together with her husband, shall wage her law.

When the suit is for the king, or for his benefit, as in a quo mi

nus, the defendant shall not wage his law.

If an infant be plaintiff, the defendant shall not wage his law. An alien shall wage his law in that language he can speak.

In no case where a contempt, trespassure deceit, or injury 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 debt, detinue, accompt, the defendant is allowed by law to wage his law.

In an action of account against a receiver, upon a receipt of money by the hand of another person for account render (unless 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 privity betweene the plaintiff and defendant, but in the notice of a third person, and such a receipt is traversable [d]. But in an action of debt upon arbitration, or in an action of detinue by the bailment of another's hand, the defendant shall wage his law, because the debit and the detinues is the ground of those actions, and the contract or bailment, though it be by another hand, is but the conveyance, and not traversable. In an action of account against a bailiff of a manor, the defendant cannot wage his law, because it soundeth in the reale. In an action of debt which concerns the reale, and for debt for a rent upon a lease for yeares, or an action of detinue for detaining an indenture of a lease for yeares, the defendant shall not wage his law, much lesse for charters or deeds which concern inheritance.

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 law, for that it is no court of record.

In debt upon an account, before auditors, the defendant shall not wage his law, and this by construction of the statute of W. 2. cap. 11. which giveth them great authority, and saith, coram audi
toribus, and therefore of an account before one auditor the law lyeth. So if the lord before auditors be found in surprisage, in an action of debt brought by the accomptant, the lord shall not wage his law by construction also upon this statute, as an incident rising upon the account.

In an account 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 die for default of sustenance; otherwise it is for tabling of a man at large.

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 servant 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 serve; otherwise it is, if he be not retained according to the statute (1).

Wheresoever a man is charged as executor or administrator, he shall not wage his law, for no man shall wage his law of another man’s deed, but in case of a successor of an abbot, for that the house never dieth.

In debt upon a penalty given by statute, the defendant shall not wage his law. There is another kind of wager of law in a real action, of non summonas, but thereof Littleton speaketh not.

“Et sur ecc Herle justice dit, &c.” Hereby it appeareth, that it is the office of the judges to instruct the grand assise or jury in points of law; for as the grand assise or other jurors are triers of the matters of fact, ad questionem facti non respondent judices, so ad questionem juris non respondent juratores. And accordingly the judge in this case directed the grand assise, viz. if they found that, &c.

“Per que suit agard.” Here are two things to be observed. First, the form of a judgement final. Secondly, that a judgement final is to be given in this particular case. For the form of the final judgement for the tenant is here expressed, that the tenant shall hold the tenements demanded against him, to him and his heirs quite of the demandant and his heirs for ever, and the demandant in the mercy. Quod tenens tenet terram illum sibi et hereditibus suis in pace versus petentium, & heredes suos in perpetuum.

For the second point, seeing the mise is joined upon the meer right, albeit the verdict of the grand assise be given upon another point, yet judgement final shall be given. And so it is if the tenant after the mise joyned 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 gave their verdict upon the meer right.


(1) [See Note 232.]

A DEED of confirmation is commonly in this form, or to this effect: Know all men, &c. that I &c. have ratified, approved, and confirmed to C. of D. the estate and possession which I have, of, and in one message, &c., with the appurtenances in F. &c.

HERE first our author shewes what a confirmation is:

"Confirmation." Confirmatio commeth of the verbe & confirmare, quod est firmum facere; and therefore it is said, that confirmatio omnes supplet defectus, licet id quod actu non sit initio, non valuit. A confirmation is a conveyance of an estate or right in esse, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased.

A confirmation doth not strengthen a voidable estate. Confirmatio est nulla ubi donum precedens est invalidum, et ubi donatio nulla omnino nec valabili confirmationi; for a confirmation may make a voidable or defeasible estate good, but it cannot work upon an estate that is void in law. Non valet confirmatio nisi ille qui confirmat sit in possessione, vel juris unde fieri debet confirmatio, & cedem modo nisi ille cui confirmatio sit, sit in possessione. And another saith, [c] Confirmare est id quod prius infirmum fuit firmare. Et donationum alia incepta, & defectiva, & post tempus confirmata, confirmatio enim ommem supplet defectum, poterit enim esse in pendenti dote per ratificationem heredis cum ad statum pervenerit roboretur (1).

"Ratificasse." Ratificare est ratum facere, and is equivalent to confirmare, which, as hath been said, is firmum facere.

"Approbasse." Commeth of ad and probo, which is to make perfect and good.

"Confirmasse." Here it is to be observed, 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. Quelibet confirmatio, aut est perfecciens, crescens, aut diminuens; and of all these Littleton putteth examples in this chapter. And hereof Fleta saith, carta autem de confirmatione est illa que alterius factum consolidat & confirmat, & nihil novi attribuit, quandoque tam un confirmat & addit (2).
Of Confirmation.

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ET en aucun cas un fait de confirmation est bon et available, lou en tuel case un fait de release n'est passe bon ne available. Si comme jeo lessa terre a un home pur terme de sa vie, lequel lessa mesme la terre a un auter pur terme de xl. ans, per force de quel il est en possession; si jeoper mon fait confirme l'estate del tenant a terme d'ans, et puis le tenant a terme de vie morust durant le terme des * ans, jeo ne puis enter en la terre durant le dit terme.

LITTLETON in this chapter putteth eight diversities betweene a confirmation and a release (1); and thereof for illustration here hee putteth two cases in this and the next Section, which upon that which hath bee said in the precedent chapters, is sufficiently explained. Onely in both these cases this is to bee observed, that where a confirmation shall enlarge an estate, there privity 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:

Lessee for life made a lease for thirty yeares, and after the lessor and lessee for life made a lease for sixty yeares to another, which lease for sixty yeares the lessor did first confirme, and after the les- sor confirmed the lease for thirty yeares, and after tenant for life dyed within the thirty yeares; and it was adjudged [d], that the lease for thirty yeares was determined by the death of lessee for life, and that the lessee for sixty 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.

In this chapter is also to be observed eight cases, wherein a release and a confirmation have the like operation in law.

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UNCORE si jeoper mon fait de release arovy release al tenant a terme d'ans en la vie le tenant a terme de

YET if I by my deed of release had released to the tenant for yeares in the lifetime of the tenant for

* xl. added L. M. and Rob.

(1) He also mentions eight instances in which they agree.

de vie, cel release serra voyd, pur cee que adonques ne fuit aucun privity perenter † moy et le tenant a terme d'ans: car release n'est available al tenant a terme d'ans, mes lou est un privity perenter luy et celuy que re-
leasast.

This belongeth to the first diversity betweene a release and a confirmation.

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IN mesme le manner est, si jeo soy disseise, et le disseisor fait un lease a un auter pur terme d'ans, si jeo relesa al termor, cee est voyde : mes si jeo confirma † l'estate le termor, cee est bone et effectual.

Here is the second diversitie betweene a release and a confir-

mation. But if the disseisor make a lease for yeares to begin at Michaelmas, and the disseisee confirme his estate, this is void, because he hath but interesse termini, and no estate in him, where-
upon a confirmation may enure.

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ITEM, si jeo soy disseise et jeo confirma l'estate le disseisor, il ad bone et droiturel estate en fee sim-
ple, comment que en le fait de confirmation nul mention est fait de ses heires, pur cee que il awoit fee sim-
ple al temps de confirmation. Car en tiel case si le disseisee confirma l'es-

tate le disseisor, a aver et tener a luy et a ses heires de son corps engendres, ou a aver et tener a luy pur le terme de sa vie, unecore le disseisor ad fee simple, et est seisie en son demesne come de fee, pur cee que quant son estate fuit confirme, donque il awoit fee simple, et tel fait ne poit changer son estate, sans entry ‡ fait sur luy, &c.

† moy et le tenant a terme d'ans,—buy et moy, L. and M. and Roh.
‡ l'estate de termor,—son estate, L. and M. and Roh.

HERE

A LSO, if I be disseised, and I confirme the estate of the dis-
seisor, hee hath a good and right-
full estate in fee simple, albeit in the deede of confirmation no men-
tion be made of his heires, because hee had fee simple at the time of the con-
firmation. For in such case if the disseisee confirme the state of the disseisor, to have and to hold to him and his heires of his body en-
gendred, or to have and to hold to him for term of his life, yet the dis-
seisor hath a fee simple, and is seised in his demesne as of fee, be-
cause when his estate was confirmed, he had then a fee simple, and such deed cannot change his estate, with-
out entry made upon him, &c.

HERE

‡ I fuit not in L. and M. nor Roh.

[296. b.]

(5 Rep. 81.)
3. Of Confirmation. Sect. 520.

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 ever. 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 only. Et sic de ceteris (1).

[279. a.]

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En meme le manner est, si son estate soit confirme par terme de un jour, ou par terme d'un heure, il ad bon estate en fee simple, pur cee que son estate en fee simple fuit un fois confirme. Quia confirmare idem est, 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 hour, it is good for ever, because (saith Littleton) confirmare idem est, quod firmum facere.

Nota, a diversity between a bare assent without any right or interest, and an assent coupled with a right or interest; and therefore an attornment cannot be made for a time nor upon condition; but if the person make a lease for a hundred yeares, the patron and the ordinary may confirme fifty of the yeares, for they have an interest, and may charge in time of vacation. And so if a disseisor make a lease for an hundred yeares, the disseisee may confirme parcel 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 parcel of the terme should be repugnant when the whole was confirmed before, but the confirmation must be of the land for part of the terme. So may the confirmation be of part of the land; as if it be of forty acres, he may confirme twenty, &c. So if tenant for life make a lease for an hundred yeares, the lessor may confirme cyther for part of the terme, or for part of the land. But an estate of free-hold cannot bee confirmed for part of the estate, for that the estate is intire, and not severall, as yeares be (1).

* son not in L. and M. nor Rob.*

(1) [See Note 255.] (1) [See Note 236.]

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If, my disseisor make a lease for life, the remainder over in fee, if I release to the tenant for life, this shall enure to him in the remainder. But if I confirm 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 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 reversion, because all my right is gone by such release. But in this case, if the disseisee confirm the estate and title of him in the remainder without any confirmation made to tenant for life, the disseisee cannot enter upon the tenant for termes of life, for that the remainder is depending upon the state for life; and if his estate should be 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.

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 several estates be in one person; as if the disseisor make a gift in taile, the remainder to the right heires of tenant in taile, if the disseisee confirm the estate in taile, it shall not extend to the fee simple, no more than 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 remainder for life, nor to the remainder in fee. But if the disseisor make a lease for life, to A. and B. and the disseisee confirm the estate of A., B. shall take advan-

tage thereof; for the estate of A. which was confirmed was joynt with B. and in that case the disseisee shall not enter into the land, and devest the moity of B.

If the disseisor incoffs A. and B. and the heires of B. if the disseisee confirm 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,
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 tyle discontinueth in fee and dyeth, the discontinuenee
make a lease for life, and granteth the reversion to the issue, he
shall not have a formedon against tenant for life; for by his formedon
he must recover estate of inheritance, and the lessee for life hath
not the inheritance, but the issue in tyle himselfe hath it.

If feoffee upon condition make a lease for life, or a gift in taily,
and the feoffor release the condition to the feoffee, he shall not enter
upon the lessee or donee, because he cannot regaine his ancient
estate.

If the feoffee upon condition make a lease for life, the remainder
in fee, if the feoffor release the condition to the lessee for life, it
shall enure to him in the remainder; as well as in the case of the
right, or of a rent, &c.

If a feme disseisoresee make a feoffment in fee to the use of A.
for life, and after to the use of herselfe in taily, and the remainder
to the use 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 remainder (1).

But if A. letteth to B. for life, and B. maketh a lease to C. for
his life, the remainder 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.
dyeth, A. shall be in of his old estate, for his release could not enure
to himselfe to perfect his defeasible remainder, but his ancient right
remaineit. And note, that in these two cases the fee is devested
and vested all at one instant; in the same manner as if tenant in
taille make a lease for life, at the same instant the estate taily is de-
vested out of the donee, and the reversion in fee out of the donor,
and a new fee vested in tenant in taily. And so if the husband make
a lease for life of his wife's land, he devesteth his own estate, that
he hath in her right, and the inheritance of his wife, and at the
same instant vested a new reversion in fee in himselfe.

"Mes en cest cas si le disseisee confirme l'estat et title celuy en
"le remaynder." Here is the third case wherein the release and

confirmation doe agree, for the confirmation made to him

in the remainder shall availle the tenant for life, as much

as the release shall.

"Por cee que le remainder est dependant, &c." By this some
have gathered, that if a disseisor make a lease for life, reserving the
reversion to himselfe, and the disseisee confirneth the state of the
disseisor, that he may enter upon the lessee, because the estate of
him in the reversion dependeth not upon the state for life as the
remainder: but all is one, for by the confirmation made to him in
the reversion, all the right of him that confirneth is gone, as well
as when he maketh it to him in remainder; and he cannot by his
entry avuide the estate of the lessee for life, but hee must avuide
the state of the lessor, which against his owne confirmation he can-
not doe; and it hath been adjudged, that if a disseisor make a

lease

(1) [See Note 257]
lease for life, and after levy a fine of the reversion with proclama-
tions, and the five years passe, so as the disseisee is for the reversion
barred, he shall not enter upon the lessee for life.

"Le remainder serve defect." It is regularly true, that when
the particular estate is defeated, that the remainder thereby shall
be also defeated, but it faileth in divers cases.

For where the particular estate and the remainder depend upon
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 defeat the estate for
life, yet the remainder to C. being once vested by good title shall
not be avoided; for it were against reason that the lessor should
have the remainder again, against his owne liverie; 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 remain-
der 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 re-
mainder created.

If a lease be made to A. for the life of B. the remainder to C.
in fee, A. dyeth before an occupant entret, here is a remainder
without a particular estate, and yet the remainder continueth
good (1).

A rent is granted to the tenant of the land for life, the remainder
in fee, this is a good remainder, albeit the particular estate con-
cluded not; for eo instanti that he took the particular estate, eo in-
stante the remainder vested, and the suspension in judgement of law
grew after the taking of the particular estate (2).

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 upon an instant (3).

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ITEM, si sunt duo disseissors, et
le disseise releasa a un de eux, il
tiendra son compagnon hors de la
terre. Mes si le disseise confirma
l'estate de l'un, sans plus; *dire en le
faut, ascens diont que il ne tiendra
son compagnon dehors, mes tiendra
joyntment ove luy, pur ceo que t'iens
fuit confirme, forsque son estate que
fuit joynt, &c.

* dire—parlance L. and M. and Roh.
(1) But since the stat. 29 Car. 2. c. 3. 14
Sess. 2. c. 20. no such vacancy can happen.

ALSO, if there bee two disseisors,
and the disseise releaseth to
one of them, hee shall hold his com-
panion out of the land. But if the
disseise confirmes the estate of the
one, without more saying in the
deede, some say that hee shall not
hold his companion out, but shall
hold joyntly with him, for that no-
thing was confirmed but his estate,
which was joynt, &c.

† add added L. and M. and Roh.
(2) [See Note 238.]
(3) [See Note 239.]
THIS is the fourth case wherein the release and the confirmation seeme to differ, being made unto one of the disseissors.

"Confirme forsque son estate, &c." Hereby it appeareth, that if the disseissee confirmes the estate of the one disseissor in the lands, to have and to hold the lands or tenements, or the right of the disseissee, to him and his heires, hee shall hold out the other disseissor; and that appeareth by Listleton, first, upon these words (confirme the estate of one) without more saying in the deede, viz. to have and to hold the lands, &c. Secondly, the reason of Listleton in expresse words is, for that nothing was confirmed but his estate which was joyned. 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 than a confirmation. If the disseissee and a stranger disseise the heire of the disseissor, and the disseissee confirmes the estate of his companion, this shall not extinguish his right that was suspended: so as if the heire or the disseissor re-enter, the right of the disseissee is revived. And so it is if the grantee of a rent-charge and an estranger disseise the tenant of the land, and the grantee confirmes the estate of his companion, the tenant of the land re-enter, the rent is revived; for the confirmation extended not to the rent sus- pended, otherwise it is of a release in both cases.

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ET pur cco ascuns ont dit, que si deux joyntenants sunt, et l'un confirme l'estate l'autre, que il n'ad forsque joynt estate, sicome il avoit adecant. Mes s'il ad tiels parols en le fait de confirmation, a aver et tener a luy et a ses heires tous les tenements dont mention est fait en le confirmation, donques il ad estate sole en les tenements, &c. Et pur cco il est bone et sure chose en chescun confirmation d'aver ceux parolx; a aver et tener les tenements, &c. en fec, ou en fec taile, ou pur terme de vie, ou pur terme d'ans, solonque cco que le cas † est, ou le matter gist.

AND for this some have said, that if two joyntenants bee, and the one confirmes the estate of the other, that he hath but a joynt estate, as he had before. But if hee hath, such words in the deed of confirmation, to have and to hold to him and to his heires all the tenements whereof mention is made in the confirmation, then he hath a sole estate in the tenements, &c. And therefore it is a good and sure thing in every confirmation to have these words; to have and to hold the tenements, &c. in fec, or in fec taile, or for terme of life, or for terme of yeares, according as the case is or the matter lyeth.

AND this confirmation leaveth the state as it was, and deth not amount to any severance of the joynture, as some have said.

"Mes s'il ad tiels parols en le fait, &c." This is plain and evident enough.

"Et pur cco il est bone et sure chose, &c." This is good counsell, and worthy to be observed.

So not in L. and M. nor Roh. † est not in L. and M. nor Roh.
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OF the intent d’ascuns, si home
lessa terre a un auer pur terme
de vie, et puis confirma son estate que
il ad en mesme la terre, a aver et tener
son estate a luy et a ses heires, cest
confirmation quant a ses heires est
void, car ses heires ne poient aver son
estate, que a ne fuit forseque pur terme
de son vie. Mes s’il confirma son
estate per ceux parolx, a aver mesme
le terre a luy et a ses heires, cest con-
firmation fuit fee simple en cest case
a luy en la terre, pur cee que il les
parolx a aver et tener, &c. va a le
terre, et nemy al estate que il ad, &c.

HERE the diversity is apparent betweene a confirmation of the
estate for life in the land to have and to hold the said state in
the land to him and his heire, this cannot enlarge his estate,
for his estate being but for life, that estate cannot bee ex-
tended to his heires. But in that case if he confirme the estate for
life in the land in the premisses of the deed, and the habendum is in
this sort, to have and to hold the land to him and his heires, this
shall enlarge his estate, and create in him a fee simple.

Wherein is to bee noted, [e] 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 (1).

And seeing that in conveyances, limitations of remainders are
usual and common assurances, it is dangerous by concepts or nice
distinctions to bring them in question, as have in latter time beene
attempted.

“Son estate.” Vide Sect. 650.

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ITEM, si jeo lessa certaine terre a
un feme sole pur terme de sa vie,
laquel prent baron, et puis jeo con-
ferma

* ne not in L. and M. nor Roh.

† les parolx—le L. and M. and Roh.

(1) On the operation of an habendum in a deed, see ant. 21. a. Vid. Abr. Grant. J. K. L.
and M.
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firme the estate of the husband and wife, to have and to hold for term of their two lives; in this case the husband doth not hold joyntly 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 term of his life, if hee surviveth his wife.

HHERE is the fourth case wherein the release and confirmation doe agree; and in this case it is to be observed, 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 been made of his estate to him alone, to have and to hold the land to him and to his heires, this had been good to have conveyed 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 convey the inheritance of the land to the husband (2).

"Ne tient joyntment one sa feme." For two causes. First, because the wife hath the whole for her life. Secondly, joynt-tenants must (as hath been before said in the chapter of Joynttenants) come in by one title. But in this case if the confirmation had been made to the husband and wife, to have and to hold the land to them two and to their heires, they had been joynt-tenants 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 couverture.

If a man letteth land to the husband and wife, to have and to hold the one moity to the husband for term of his life, and the other moity to the wife for her life, and the lessor confirm 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 moity of the husband, it enureth only to the husband and his heires, for the wife had nothing in that moity; but as to the moity of the wife, they are joynt-tenants, as hath bin said; for the husband hath such an estate in his wife's moity, in her right, as is capable of a confirmation. But if such a lease for life be made to two men by several moities, and the lessor confirm 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 quality and nature of the estate which it doth enlarge and increase.

If a lease for life be made to \( A \), the remainder to \( B \) for life, and the lessor confirm their estates in the land, to have and to hold to them and their heires, \( A \) taketh one moity to him and his heires, and therefore of the one moity he is seised for life, the remainder to \( B \) for life, and then to him and his heires: of the other moity \( A \) is seised for life, the immediate inheritance to \( B \) and his heires; because

\[4\] la terre added L. and M. and Rph.

(2) [See Note 260.]
because as to the moity 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 moiety, (as hath been said before) and therefore in this case they are tenants in common.

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 joynetens of the fee simple, because the donees were joynetens for life, and (say they) the confirmation must enure according to the estate which they have in possession, and that was joyn. But others hold the contrary. For, first, they say, that the donees have to some purposes several inheritances executed, though between the donees survivor shall hold for their lives. Secondly, they say, that when the whole estate, which comprehended several inheritances, is confirmed, the confirmation must enure according to the several 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.

"Per voy de remainder, &c." Here some question hath been 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 quod ad illum reversi debet post mortem A. praebat B. & hereditibus suis remanescat, &c. and a more colourable exception might be taken against this word remanescat there, than in the case of Littleton.

It is true, that in * 16 H. 6, it is called a reversion: in [a] 9 E. 4, it is called a remainder: in [b] 6 E. 3, it is said, that by the confirmation an estate accrued to the husband for term of his life. In [c] 17 E. 3, the husband, living the wife, shall have nothing but in abeyance after the death of his wife. But lest there should bee pugna verborum, which learned and wise men ever avoide, all do resolve, that the estate of the husband is good, and that it doth enure by way of increase and enlargment of his estate. And albeit in this case of Littleton, the husband by the confirmation gaineth an an estate for life in remainder, (as Littleton termeth it) yet if the husband doth waste, an action of waste shall lie against him and his wife, notwithstanding the meane remainder, because the husband himselfe committeth the waste, and doth the wrong; and therefore shall not excuse himselfe for his committing of waste, in respect he himselfe hath the remainder; no more than if a man lesseth to A. during the life of B. the remainder to him during the life of C. if he commit waste, an action of waste shall lie against him (1).

(1) [See Note 261.]
Mes si jeo lessa al femme sole terre pur terme d'ans, lequel prent baron, et puis jeo confirma l'estate le baron et sa femme, a aver et tener la terre pur terme de lor deux vies : en cest case ils ont joyn estate en le franktemenent de la terre, pur ceo que la femme n'avoit franktemenent advaunt, &c.

But if I let land to a femme sole for terme of yeares, who taketh husband, and after I confirm the estate of the husband and his wife, to have and to hold the land for term of their two lives : in this case they have a joyn estate in the freehold of the land, for that the wife had no freehold before, &c.

This is the fifth case wherein the release and confirmation doe agree : and it is to be observed, that chattels reals, as leases for yeares, wardships, and the like, are not given to the husband absolutely (as all chattels personal are), by the intermarriage, but conditionally if the husband happen to survive her, and he hath power to alien them, at his pleasure : but in the mean time the husband is possessed of the chattels recall in her right.

Secondly, that the husband hath such a possession in her right of the chattell, as is capable of a confirmation or of a release.

Thirdly, that the confirmation in this case to the husband and wife for their lives, maketh them joynentans for life, because a chattell of a feme covert may be drowned : and so note a diversity betweene a lease for life and a lease for yeares made to a feme covert; for her estate of freehold cannot be altered by the confirmation made to her husband and her, as the terme for yeares may, whereas her husband may make disposition at his pleasure (1).

Item, si mon disseissor granta a un rent charge hors de la terre dont il moy disseisist, et jeo rehersant le dit grant confirma mesme le grant, et tout ceo que est comprise deins mesme le grant, et puis jeo enter sur le disseissor; quere, 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 mee, and I rehearsing the sayde grant confirme the same grant, and all that which is comprised within the same grant, and after I enter upon the disseissor : quere, 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 voide. It is holden by some authority since Littleton wrote, that the disseisee

* &c. added in L. and M. and Roh.

(1) [See Note 262.]
Sect. 528.

ITEM, si un parson d'un esglise charge* le glebe de son esglise persom fait, et puis le patron et l'ordinary confirmant mesme le grant, † et tout ce que est comprise deins mesme le grant, donques le grant estoyera en sa force, solonque le purport de mesme le grant. Mes en tiet case corient que le patron eit fes simple en le vowson; car s'il ‡ n'ad estate en lavowsen forsque pur terme de vie, ou en le tuile, donque le grant ‡ ne estoyera forsque durant sa vie, et la vie le parson que grantust, &c.

ALSO, if a parson of a church charge the glebe land of his church by his deed, and after the patron and ordinary confirm the same grant, and all that is comprised in the same grant, then the grant shall stand in his force, according to the purpose of the same grant. But in this case it behoveth that the patron hath a fee simple in the advowsion; for if he hath but an estate for life, or in tail, in the advowsion, then the grant shall not stand, but during his life, and the life of the parson which granted, &c.

PARSON;" Persona. In the legall signification it is taken for the rector of a church parochial, and is called persona ecclesiae, because he assumeth and taketh upon him the parson of the church, and is said to be seised in jure ecclesiae, and the law had an excellent end therein, 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 said to be plena & consulta of such a one parson thereof, that is, full and provided of a parson, that may vicem seu personam ejus gerere. Persona impersonata, parson, impersonce is the rector, that is in possession of the church parochial, be it presentative, or improper, and of whom the church is full.

Here are divers things to bee noted. First, that the confirmation is of the grant, which in deed is but a meere assent by deed to the grant; and therefore it is holden, that if there be a parson, patron, and ordinary, and the patron and ordinary give 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 binde the successor; and yet here is no confirmation subsequent, but a licence precedent.

Secondly,
Secondly, The ordinary 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 ordinary, in the life-time of the bishop.

Thirdly, [6] but if the bishop be patron, there the bishop cannot confirme alone, but the deane and chapter must confirme also; for the advowson or patronage is parcell of the possession of the bishopricke; 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.

A. parson of D. is patron of the church of S. as belonging to his church, and presents B. who by consent of A. and of the ordinary, grants 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 confirms must have a fee simple, meaning to make the charge perpetuall. (1) 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 upon condition; otherwise it is of an attorneument, because that is a bare assent. Also if the estate of the patron be conditionall, and he confirms, and after the broken, his confirmation is void.

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 ever.

But here is to be observed a diversity between a sole corporation, as parson, prebend, vicar, and the like, that have not the absolute fee in them, for to their grants the patron must give his consent. But if there be a corporation aggregate of many, as dean and chapter, master, fellows, and scholars of a college, abbot or prior, and covent, and the like, or any sole corporation that hath the absolute fee, as a bishop with consent of the dean and chapter, they may by the common law make any grant of out of or over 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 respectively maintain a writ of right.

If a bishop hath two chapters, and he maketh a grant, [301. a.] both chapters must confirm it, or else the successor shall avoide it. But if one of the chapters be dissolved, then the confirmation of the other sufficeth; but it needeth not the confirmation of the king, who is founder and patron of all bishoprickes (1).

And note a diversity between a confirmation of an estate, and a confirmation of a deed; for if the disseisor make a charter of feoffment

(1) [See Note 264.]

(1) For the confirmation of leases made by ecclesiastical persons, see Bacon's Abr. tit. Leases.
feoffment to A. with a letter of attorney, and before livery the
disseisee confirme the estate of A. or the deed made to A. this is
clearly voide, though livery be made after. But if a bishop had
made a charter of feoffment with a letter of attorney, and the
dean and chapter before livery confirme the deed, this is a good
confirmation, and livery made afterwards is good. And so it hath
been adjudged.

The like law is of a confirmation of a deed of grant of a reversion
before attornment.

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 dean and chap-
ter by their deed confirme the deed of the bishop, and after the
deed of the bishop is incorlled, this is good, albeit the confirmation
of the deane and chapter be not incorlled; for the assent upon the
matter is made to the bishop.

But this confirmation that Littleton here speaketh of must be
made in the life, and during the incumbency 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 college, deane and chapter,
master or gardeine of any hospital, or any having any spirituall
or ecclesiastical living are restrained by [e] divers acts of parliament,
so as they cannot grant any rent charge, or to make any aliena-
tion, or to make any leases other than such as are mentioned in
those acts, which you may reade at large, and the expositions upon
the same, in my [*] Commentaries.

Sect. 529.

ITEM, si home lessa terre pur
terme de vie, le quel tenant a
terre de vie charge la terre ove un
rent en fee, et celuy en le reversion
confirme mesmo le grant, le charge
est assets bona et effectuell.

ALSO, if a man letteeth land for
term of life, the which tenant
for life charge the land with a rent in
fee, and hee in the reversion confirme
the same grant, the charge is good
enough and effectuell.

HERE is a diversity to bee observed, where the determination
of the rent is expressed in the deed, and when it is implied
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 reversion makes that grant good for ever,
without words of inlargement, or clause of distress, which would
amount to a new grant. And yet if the tenant for life had granted
a rent to another and his heires by expressse 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.

Tenant for life upon a condition grant a rent in fee, the lessor
confirm the grate, and after the condition is broken, the lessor
re-enter, he shall not avoid the grant.
Lib. 3. Of Confirmation. Sect. 530, 531.

Sect. 530.

ITEM, si soit un perpetual chantarie, dont l’ordinarie n’ad rien a medler ne a faire; quere, si le patron del chantrety, et le chapleine de mesme le chantrety poinct charge le chantrety ove un rent charge en perseverite.

THIS is meant of a chantrety donative wherewith the ordinary hath not to deale, and by this grant, when Littleton wrote, the chantrety should have been charged for ever, because no other had any interest in this chantrety save only the patron and chantrey priest, and the grant is made concurrentibus his que in jure requiruntur. But since Littleton wrote, all, and all manner of free chappels and chantretries perpetuall, whereof Littleton here speakes, are by [a] acts of parliament given to the crowne, and the bodies politike thereof dissolved. See hereafter, Section 648, more at large of all this present Section.

Sect. 531.

ITEM, en aucun cas c’est verbe dedi, ou c’est verbe concessi, ad mesme l’effet en substance, et urera a mesme l’entent, c’est verbe confirmanvi. Sicome jeto sue disseisise d’un carne de terre, et jeto face dieu fait; Seiante presentes, &c. quid dedi a le disseis, &c. vel quod concessi a le dit disseisir, le dit carne, &c. et jeto deilr tantstolent de le fait a luy sausna ascens liere de seisin del terre, c’est un bonne confirmanvi, et auxy fort en ley, sicome il avoit en le fait c’est verbe confirmanvi, &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 confirmanvi. As if I bee disseised of a carue of land, and I make such a deed; Seiante presentes, &c. quid dedi a le disseisir, &c. or quod concessi to the said disseisir, the said carue, &c. and I deliver onely the deed to him without any livery of seisin of the land, this is a good confirmation, and as strong in law, as if there had beene in the deed this verbe confirmanvi, &c.

HERE Littleton proceedeth, according to the former division, to shew words that in law do amount to a confirmation. And here is to bee observed, that some words are large, and have a generall extent, and some have a proper and particular application. The former sort may contain the latter; as dedi, or concessi, may amount...
amount to a grant, a fcoffment, a gift, a lease, a release, a confirmation, a surrender, &c. and it is in the election of the party to use to which of these purposes he will.

Est autem confirmatio quasi quedam ratification, sufficit tamen quandoque per se, si etiam in se continent donationem, ut si dicat quis, dedi et confirmavi, licet juvare possit ex aliquo donatione precedente.

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 conveyances, and are destined to a special end (1).

"Dedi et concessi, &c." Here is implied that there be more words than dedi and concessi, that will amount to a confirmation, as dimissi. [c] In ancient statutes and in original writs, as in the writ of entry in case proved, in consimili case ad communem legem, and many others, this word dimissi 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 et teneret terram pro termino viata sua; this is adjudged by this verbe (voluit) to bee a good confirmation for termes of his life. Beneficium enim facienda sunt interpretationes cartarum propter simplicitatem laicorum ut res magis valent quam percut.

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 (2).

If a parson and ordinary make a lease for yeares of the glebe to the patron, and the patron by his deed granteth it over, or if the disseisor granteth a rent to the disseisee, and he by his deed granteth it over, and after re-enter; in both these cases one and the same words doe amount both to a grant, and to a confirmation in judgement of law of one and the same thing, ne res fereat. And so it is if a disseisor make a lease for life, or a gift in taile, the remainder to the disseisee in fee, the disseisee by his deed granteth over the remainder, the particular tenant attorneth, the disseisee shall not enter upon the tenant for life, or in taile, for then he should avoid his owne grant, which amounted to a grant of the estate, and a confirmation also.

(1) The effect of the word grant, in implying a warranty, will be considered in a note on the chapter of Warranty.

(2) [See Note 355.]
Of Confirmation.

Section 533, 534.

Et si jeo die en le fait, a aver et
tener a luy et a ses heires de son
corps engendres, il ad estate en fee
taille. Et si jeo die en le fait, a aver
tener a luy et a ses heires, il ad
estate en fee simple. Cur cee urera
a luy per force de confirmation
d'entlarger son estate.

And if I say in the deed, to have
and to hold to him and to his
heirs of his body engendred, hee
hath an estate in fee tailte. And if I
say in the deed, to have and to hold
to him and to his heirs, he hath an
estate in fee simple. For this shall
ensure to him by force of the con-
firmation to inlarge his estate.

This also is evident, and needeth no explication, saving that
whenever a confirmation doth inlarge and give an estate of
inheritance, there ought to be apt words (as Littleton here expres-
seth them) used for the same.

Section 534.

Also, if a man be disseised, and
the disseisor die seised, and his
heire is in by descent, and after the
disseise and the heire of the disseisor
make joyntly a deede to another in
fee, and livery of seisin is made upon
this, (as to the heire of the disseisor
that sealed the deed) the tenements
doe passe and ensure by the same deed
by way of feoffment; and as to the
disseisee who sealed the same deed,
this shall ensure but by way of con-
firmation. But if the disseisee in this
case brings a writ of entry in the per

\* so not in L. and M. nor Roh.
\+ confirmation—confirmament, L. and M. and Roh.
\+ le disseisor not in L. and M. nor Roh.

et uront not in L. and M. nor Roh.
$ sinon—nes, L. and M. and Roh.
$ del—le, L. and M. nor Roh.
querre, coment il piedra cel fait en
cvere le demandant per voy de con-
firmation, * &c. Et suches, mon fil,
que est un des plus honorables, laud-
able, et profitables choses en nostre
ley, de aver le science de bien pleder
en actions reals et personals; et pur
coe jec toy counsale especialment de
mitter † ton courage et cure de cco
apprendre‡.

"QUANTal heire del diseison, &c. les tenements passont per voy
de feoffment." For the land shall ever passe from him
that hath the state of the land in him. As if ceste que [302, b.]
use and his feoffees after the statute of 1 R. 3 and before the statute
of 27 H. 8. cap. 10. had joined in a feoffment, it shall be the feoffment
of the feoffees, because the state of the land was in him.

So it is if the tenant for life, and hee in the remainder or rever-
sion in fee, joyne in a feoffment by deede. The livery of the free-
hold shall move from the lessee, and the inheritance from him in
the reversion or remainder, from each of them according to his
estate. For it cannot be adjudged by law, that the feoffment of
tenant for life doth draw the reversion or remainder out of the les-
see or him in remainder, or doth worke a wrong because they
joyned together (1).

If there bee tenant for life, the remaynder in tayle, &c. and
tenant for life and he in the remainder in taisle levie a fine, this is
no discontinue or divesting of any estate in remainder, but each of
them passe that which they have power and authority to passe.

A. tenant for life, the remainder to B. for life, the remainder in
tayle, the remainder to the right heires of B. A. and B. joyne in
a feoffment by deede, albeit it may be said that this is the feoffment
of A. and the confirmation of B. and consequently hee in the re-
mainder in tayle cannot enter for the forfeiture during the life of B.
but because B. joyned in the feoffment, which was torcious to him
in the remainder in taisle, and is particeps criminae, therefore they
forfeited both their estates, and he in the remainder in tayle might
enter for the forfeiture. But if he in the reversion in fee and tenant
for life joyne in a feoffment by paroll, this shall be (as some hold)
first, a surrender of the estate of tenant for life, and then the feoff-
ment of him in the reversion; for, otherwise, if the whole should
passe from the lessee, then he in the reversion might enter for the
forfeiture, and every man's act (ut res magis valeat) shall be con-
strued most strongly against himselfe.

And it is to be observed that Littleton here putteth a discent, so
as the entry of the disseisor is not lawfull; for if the disseisor and
disseisee

* &c. not in L. and M. nor Roh.
+ &c. added L. and M. and Roh.
† tout added L. and M. and Roh.

(1) [See Note 269.]
dissectee joyne in a charter of feoffment, and enter into the land, and make livery, it shall be accounted the feoffment of the dissectee, and the confirmation of the disissor.

"Quare consentil pleadera cest fuit, &c." Hee may pleade the feoffment of the heire of the disissor, and the confirmation of the dissectee as it hath been pleaded and allowed.

"Et saches, mon fite, que est un de plus honorable, &c." Here is to bee observed the excellency of good pleading, and Littleston's grave advice, that the student should imploy his courage and care for the attaining thereof; which here shall attain unto by three means: first, by reading; secondly, by observation; and thirdly, by use and exercise. For in ancient time the serjeants and appren- tices of law did draw there own pleadings, which made them good pleaders. And in this sense placitum may be derived à placendo, quia omnibus placet.

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 booke of years and termes from the beginning of the raigne of Edw. 3. I observe, that more jangling and questions grow upon the manner of pleading, and exceptions to forme, than upon the matter itselfe, 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 prothomotary. And now we will performe our promise.

The order of good pleading is to be observed, which being inverted great prejudice may grow to the party, tending to the subversion of law. Ordine placitandi servuto, servatur & jus, &c.

First, in good order of pleading a man must pleade to the jurisdiction of the court. Secondly, to the person; and therein first to the person of the plaintiff, and then to the person of the defendant. Thirdly, to the count. Fourthly, to the writ. Fifthly, to the action, &c. [c] which order and forme of pleading you shall reade in the ancient authors agreeable to the law at this day; and if the defendant disorder any of these he loseth the benefit of the former.

The count must be agreeable and conforme to the writ, the barre to the count, &c. and the judgement to the count; for none of them must be narrower or broader than the other.

A count or declaraion, which anciently and yet is called narratio, ought to containe two things [d] viz. certainty and verity, for that it is the foundation of the suite, whereunto the adverse party must answer, and whereupon the court is to give his judgement: [c] Certa debet esse intenti et narratio, et certum fundamentum, et certa res que deductur in judicium. But it must be understood that there be three kindes 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 plaintiff, that is to convince the defendant, and so in inditements, &c. Thirdly, a certaine intent in every particular, as in estoppels.

[ε] He pleadeth a plea in abatement of the writ (which of ancient times was, and yet is called breve) or a plea after the latter continuance, ought to plead it certainly.

[γ] The ancient forms of courts are to be duly observed, as cum dimissit, 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 vicious) [γ] but in a bare replication or other kind of pleading, the party must alledge a seisin in the lessor or donor, and ancient forms of pleading are also to be observed.

[4] Counts, or such as be in nature of counts, (as an avowry, wherein the defendant is an actor) need not to be averred, but all other pleas in the affirmative ought to be averred, et hoc paratum est verificare, &c. but pleas meerly in the negative ought not to be averred, because a negative cannot be proved.

[5] Where there is but one tenant or one defendant, he cannot have such two pleas, as each of them doe goe to the whole: but where there are divers, each of them may pleade several pleas which extend to the whole (1).

[κ] That which is alledge by way of conveyance or inducement to the substance of the matter need not to be so certainly alledged, as that which is the substance it selfe.

[7] Every plea must be direct, and not by way of argument, or rehearseal.

[m] Where a matter of record is the foundation or ground of the suite of the plaintiff, or of the substance of the plea, there it ought to be certainly and truly alledged; otherwise it is, where it is but conveyance. But the proceedings and sentences in the ecclesiastical courts may be alledged summarily; as that divorce was had between such parties, for such a cause, and before such a judge, and concurrentibus his qui in jure requiruntur; for the judge must be alledged, to the intent the court may write to him if it be denied.

Good matter must be pleaded in good forme, in apt time, and in due order, or otherwise great advantages may be lost.

[n] Generall estates in feme simple may be generally alledged, but the commencement of estates tyle, and other particular estates regularly must be shewed, unless in some cases where they are alledged by way of inducement, and the life of tenant in taile, or for life, ought to be averred.

When

(1) [See Note 267.]
Of Confirmation.

[9] When any speciall and substantiall matter is alleged by either party, that ought to bee especially answered, and not to be passed over by a generall pleading.

[5] The plea of every man shall be construed strongly against him that pleadeth it, for everie man is presumed to make the best of his owne case: *ambiguum placitum interpretari debet contra proferentem.*

[9] Every plea that a man pleadeth ought to be triable, for without triall the cause can receive no end: *et expedit reipublicae ut sit finis litium.*

[r] The tenant before his default saved, may plead all pleas which prove the writ abated, as death, &c. or matters apparent in the writ; but no plea, which prove it abateable, as taking of husband, &c.

[5] 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.

[r] All necessary circumstances implied by law in the plea need not to be expressed, as in the plea of a feoffment of a manor, livery and attornment are implied.

[u] When a count, barre, replication, &c. is defective in respect of omission of some circumstance, as time, place, &c. there it may be made good by the plea of the adverse party; but if it be insufficient in matter, it cannot be salved.

[w] Every man shall plead such pleas as are pertinent for him, according to the quality of his case, estate, or interest, as disseisors, tenants, incumbents, ordnaries, and the like.

[x] Surplusage shall never make the plea vicious, but where it is contrariant to the matter before (1).

[y] That which is apparent to the court by necessary collection out of the record need not to be averred.

[a] A man is bound to performe all the covenants in an indenture: if all the covenants be in the affirmative, he may generally plead

(1) And then it does, because the plaintiff cannot discern what to answer to in his replication. Note to the 11th edition.
plead performance of all; but if any be in the negative, to so
many he must plead specially (for a negative cannot be perform-
ed), and to the rest generally. [6] So if any be in the disjunctive,
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 in-
volve that in general pleading.

[c] In many cases the law doth allow general pleading, for
avoiding of proximity and tediousness, and that the particular shall
come on the other side.

[d] Pleadings which amount to the general issue are not to be
allowed; but the general issue is to be entred. Vid. Sect. 10.
485. 499.

[e] Every plea ought to have 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 relieve upon the estoppells: et sic de similibis.

[f] When the conclusion of a plea, et insint, et sic, is in the affir-
mative, it shall not wave the special matter, for there the special
matter is the substance and foundation of the conclusion, and
affirmed by the same. But where the conclusion is in the negative,
there the special matter regularly is waved.

[g] Whencesoever special matter is pleaded, and the conclusion
(et sic) is to the point of the writ or action, the special matter is
waved.

The names of legall records are, a writ, a count, a barre, a re-
petition, a rejoynder, a rebutter, a surrebutter, &c.

[a] New and subtil devices and inventions of pleading ought not
to alter any principle of law, whereof you have heard plentifully
before.

The count or declaration is an exposition of the writ; and addeth
time, place, and other necessary circumstances, that the same may
be trieable; and any imperfectness in the count doth abate the writ.

Pleadings are divided into barres, replications, rejoyners, sur-
rejoyners, rebuttes, and surrebuttes, &c. They are words of art,
and are called barres, barre, so called, because it barreth the
plaintiff of this action. Replicationes, à replicando; rejunctiones,
à rejungendo; rebutter, of the French word, rebouter, i. e. à repel-
leneto, to put backe or avoide, and so of surrebutter.

But each party must take heed of the ordering of the matter
of his pleading, lest his replication depart from his count, or his
rejoynder from his barre; et sic de ceteris.

[i] In ancient writers a barre is called exceptio preemortoria: a
replication was then called replicatio, as now it is; a rejoynder tri-
plication; a surrejoynder, quadruplicate; et sic ulterius in infinitum.

A departure in pleading is said to be when the second plea
containeth matter not pursuant to his former, and which [304. a.]
fortifeth not the same, and thereupon it is called deceusus, because
he departeth from his former plea; and therefore whencesoever the
rejoynder (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 leaveth the former, and goeth to another matter. As if in an assise the tenant plead a descendent from his father, and giveth a colour, the demandant intituleth himselfe by a seoffement from the tenant himselfe, the plaintiff cannot say, that that seoffement was upon condition, and to shew the condition broken; for that should be 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 plaintiff sheweth, that he himselfe was seised in fee, until by I. S. disguised, who infeoffed the tenant, and he, en-entred, the defendant may plead a release of the plaintiff to I. S. for this doth fortify the barre.

If a man plead performance of covenants, and the plaintiff reply, that he did not such an act according to his covenant, the defendant saith, that he offered to do it, and the plaintiff refused it; this is a departure, because the matter is not pursuant; for it is one thing to doe a thing, and another to offer to doe it, and the other refused to doe it: therefore that should have been pleaded in the former plea. Vide *O'cave in a quare impedit*, what plea shall be safely pleaded in *primo placito*.

When a man in his former plea pleaded 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 he shall not enable himselfe by a custome, but should have pleaded it first.

If a man plead an estate generally, (as for example a seoffement in fee) he in his second plea shall not maintain it by other matter *tantamount in law*, as by a disseisin and release, or by a lease and release, or a gift in tayle in barre, and in the second plea a recovery 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 recovery in value, because he could have no other count.

See more of this matter, where the plaintiff varying from time or place alleged in the count of actions transitory, shall commit no departure.

The plea that contains duplicity or multiplicity of distinct matter to one and the same thing, whereunto several 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 peremptory, and not to pleas dilatory; for in their time and place a man may use divers of them; and hereof ancient writers * speake notably: Sicut actor unde actione debet experiri saltem illud durante, sic oportet tenenti unde exceptione, dum tamen peremptoria (quod de dilatorii non est tenendum); quia si licet fluitibus ulla exceptionibus peremptoria simul & semel, sicut fieri poterit in dilatorii, sic sequetur, quod si in probatione unius defecerit, ad aliam pro bonam possit haberet recurrens, quod non est permisibile, non magis quam aliquem se defendere duobus baculis in duello, cum unus tantum sufficiat.*

But where the tenant or defendant may plead a general issue, thereupon the general issue pleaded, he may evidence as many

(Sid. 10. 77. 180. 404.)
8 Ed. 3. 33.
23 Ed. 3. 27.
5 E. 3. 5.
40 E. 3. 33.
43 E. 3. 33.
3 E. 3. 11.
1 E. 3. 24.
8 E. 3. 24.
4 H. 7. 27.
9 H. 6. 11.
(Cro. Car. 327.)
1 Sound. 63. 169.)
Pl. Com. 189. 119.
Palmerston's case.
21 H. 7. 23.
27 H. 2. 3.
21 H. 7. 17.
37 H. 6. 8.
38 H. 6. 25.
(Sound. 149.
S. C. 1 Leol. 81.
S. C. Baym. 66.
Sid. 149.)
31 H. 7. 25.
1 E. 4. 4.
7 H. 7. 8.
Vid. Sect. 445.
Pl. Com. 139. 142.

* Pilsa R. 6. 61.
B. Bracton R.
6. 60. 600.*
many distinct matters to barre the action or right of the demandant or plaintife, as he can (1).

A speciall verdict may containe double or treble matter; and therefore in those cases the tenant or defendant may either make choice of one matter, and to plead it to barre the demandant or plaintife, or to plead the generall issue, and to take advantage of all; or he may plead to part one of the pleas in barre, and to another part another plea; and his conclusion of his plea shall avoide doubleness, and hereby neither the court nor the jury is so much inveigled, as if one plea should containe divers distinct matters. And if the tenant make choice of one plea in barre, and that be found against him, yet he may resort to an action of an higher nature, and take advantage of any other matter. And the law in this point is by them that understand not the reason thereof misliked, saying, Nemo prohibetur pluribus defensionibus uti.

And it is worthy of observation, that in the raisings of Edward the second, Edward the first, and upwards, the pleadings were plain and sensible, but nothing curious, evermore having chiefe respect to matter, and not to forms of words, and were often holpen with a quaestium est, and then the questions moved by the court, and the answers by the parties were also entred into the roile. But even in those days the forms of the register of original writs were then punctually observed, and matters in law excellently debated and resolved; and where any great difficulty was, then it was resolved by all the judges and sages of the law (who were for matters in law called concilium regis) and their assembly and resolution was entred into the roile. As for example, in the great case in a quare implebit, between the king and the prior of Worcester, concerning an approbation, whether it were a mortmain, the record saith, ad quem diem venit predictus prior per attornatum suum, &c. Et examinatis et intellectis record eo processu corum tota concilio tam thesauroari et baronibus de occassorio quidam cancellario, ac etiam justiciario de uirogue banco inspecti causae, pro quod, pro domino regis dicent, quod ad ipsum regem pertinent praesumere, &c. consideratum est, &c. For in those days though the chancellor and treasurer were for the most part men of the church, yet were they expert and learned in the laws of the realme.

As for example, in the time of the Conqueror, Egellisus episcopus Ciccetrensis vir antiquissimus, et in legibus sapientissimus, as where I have said.

[a] Nigellus episcopus Eilensis Hen. 1. thesauroari in temporebus suis incommensurabilem habuit occassari scientiam, et de eodem scribuit optimo.


[c] Martinae de Patheult clericus decanus Divi Pauli Londoni constatuis suis capitalis justis de banco, quia in legibus hujus regni perissimus.


[f] Robertus de Lexinstonio clericus constitutus capitalis justis de banco.

Hansone

(1) [See Note 268.]
Of Confirmation.


[4] Henricus de Stanton clericus constitutus fuit capitisiae justice ciarius ad placita; with many others. And so were divers and many of the nobility, who when matters of great difficultie were brought into the upper house of parliament by writ of error, adjournment, or other parliamentary course, did by the assistance of the reverend judges, who ever attended in that court, judge and determine the same as by former and ancient records, and specially by the said 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 aforementioned record there be very many.

In the reigne of Edward the third, pleadings grew to perfection both without lamenessse and curiosity; for then the judges and professors of the law were excellently learned, and then knowledge of the law flourished, the serjeants of the law, &c. drew their owne pleadings; and therefore truly said that reverend justice Thirming, in the raigne of H. 4. that in the time of Edw. 3. the law was in a higher degree than it had been 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.

In the time of Henry the Sixth the judges gave a quicke care to exceptions to pleadings, than either their predecessors did, or the judges in the raigne of Edw. the fourth, when our author flourished, or since that time have done, giving 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 provided, 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 queen Elizabeth, provision is made, that after demurrer the judges shall give judgement according to the right of the cause and matter in law, without regarding any imperfectie, defect, or want of forme in any writ, returne, plaint, declaration, or other pleading or course of proceeding whatsoever, except such as the party demurring shall specially shew. In which acts 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 wisdome and judgement of ancient and latter times, that have disallowed curious and nice exceptions tending to the overthrow or delay of justice; apices juris non sunt jura: yet it is good for a learned professor to make all things plain and perfect, and not to trust to the after aide or amendment by force of any statute, lest his client's cause matcheth not therewith; and as it is in physick for the health of a man's body, so it is in remedies for the safety of a man's cause. In law, praestat cautela quam medela.

But now let us returne to our author.

Sect. 535, 536, 537.

ITEM, si sossent seignior et tenent * mensque le seignior confirmet l'estat que le tenant ad en les tements, uncere le seigniorie entierement demurt a le seignior come il fust adequant.

ALSO, if there be lord and tenant, albeit the lord confirm the estate which the tenant hath in the tenements, yet the seigniorie remaineth intire to the lord as it was before.

Sect. 536.

IN the same manner is it, if a man hath a rent chargeout of certaine land, and hee confirmes the estate which the tenant hath in the land, yet the rent charge remayneth to the confirmer.

Sect. 537.

IN the same manner it is, if a man hath common of pasture in other land, if he confirmes 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.

HERE is the sixth case wherein the release and confirmation doe differ; for by the release of the seigniorie, 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 privitie betweene the lord and tenant, so as (say they) a tenure may be 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.

* mensue—et, L. and M. and Roh.

† en—en, L. and M. and Roh.
Of Confirmation.

Sect. 538.

Mes si soient seignior et tenant, lequel tenant tient de son seignior per le service de seali et 20s. de rent, si le seignior per son fait confirma l’estate le tenant, a tener per 12d. ou per un denier, ou per un maile: en est case le tenant est discharge de tous les auters services, et ne rendra rien a le seignior, forskyne cee que est comprise deius mesmes le confirmation.

But if there be lord and tenant, which tenant holdeth of his lord by the service of seale 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 peny: in this case the tenant is discharged of all the other services, and shall render nothing to the lord, but that which is comprised in the same confirmation.

And the reason wherefore no service of another cannot be reserved upon the confirmation is, because as long as the state of the land continueth, it cannot by the confirmation of the lord be charged with any new service. So as it is evident that the lord by his confirmation may diminish and abridge the services, but to reserve upon the confirmation new services he cannot, so long as the former estate in the tenancie continueth. And as where a confirmation doth inlarge an estate in land, there ought to be privitie, as hath beene said; so regularly where a confirmation doth abridge services, there ought to be privitie also.

And therefore here Littleton putteth his case of lord and tenant betweene whom there is privitie. And therefore if there be lord, mesne and tenant, the lord cannot confirme the estate of the tenant to hold of him by lesser services, but this is void, for that there is no privitie betweene them, and a confirmation cannot make such an alteration of tenures.

And the case in 4 E. 3. maketh nothing against this opinion; for there the case in substance is this: John de Bonville held certaine lands of Ralfe Vernon, and before the statute of quia emptores terrarum, levied a fine of the same lands to the abbot of Cogesall and his successors, to hold of the chiefe lord (which was Ralfe Vernon) by the services due and accustomed. Ralfe Vernon made a charter to the said abbot in these words: Concessi etiam eidem abbatii et successoribus suis relaxavi et quietum clamavi totum jus, &c. quod habes, vel potero habere in omnibus tenementis quae idem habes habet de dono Johannis de Bonville, tenendum de me et hereditibus meis in purum et perpetuum eleemosynam; and adjudged, that it was a good tenure in frankalmoigne: which case proveth nothing that the lord paramount may by his confirmation to the tenant peravale extract 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 ever good to relie upon the booke at large, for many times compendia sunt dispendoria, and melius est pere se fontes, quam sectari viviidos). And of this opinion was master Plowden upon good advisment and consideration.

And
And here is the seventh case wherein the release and confirmation doth agree; for if there be lord and tenant by fealty and twenty shillings rent, the lord may release all his right in the seigniorie or in the tenancie, saving fealty and ten shillings rent; but he cannot save a new kind of service, for he may aswell abridge his services upon a release as upon a confirmation. And as there is required privitie when the lord abridgeth the services of his tenant by his confirmation; so must there be also, when the lord by his release abridgeth the services of his tenant. And therefore the lord paramount cannot release to the tenant peravaile saving to him part of his services, but the saving in that case is void (1).

"Et rendra rien a son seignior fors que cec qui est comprise, &c." Which words are thus to be understood; that the tenant shall not render any more rent or annuall service to the lord than is contained in the deed; but other things notwithstanding the said confirmation the tenant shall yeild to the lord, as releefe, ayde pur filie marier, and ayde pur faire fitz chivaler, because these are incidents to the tenure that remaine, and shall not be discharged without speciall words, by the generall words of all other actions, services and demands. And so if a man hold of me by knight's service, rent, suit, &c. and I release to him all my right in the seigniorie, excepting the tenure by knight's service, or confirme his estate to hold of me by knight's service only for all manner of services, exactions, and demands; yet shall the lord have ward, marriage, releefe, ayde pur filie marier, et pur faire fitz chivaler, for these be incidents to the tenure that remaine. But it is holden, that if a man make a gift in taile by deed, reserving two shillings rent a luy et ses heirs pro omnibus et omnimodis servitutis, exactionibus secularibus et cunctis demandis, if the donce die his heire of full age, the donor shall have no releefe, because in the originall deed of the gift in taile it is expressly limited, that by the service of two shillings rent he shall be quite of all demands (and releefe lieth in demand); and by reason of those words, say they, there cannot any releefe become due; but some doe hold the contrarie in that case.

Sect. 539.

MES si le seignior voile per fait deconfirmation, que le tenant en cest cas doit render a luy un esperver ou un rose annualment a tiel feust, &c. cest * confirmation est voide, pur ceo que il reserva a luy un novel chose que ne fuit parcelle de ses services devant la confirmation: et issunt le seignior poit bien per tiel confirmation abridger les services † per queux le tenant tiens de luy,

* confirmation—reservacion, L. and M. and Roh.
† per queux le tenant tiens de luy, not in L. and M. nor Roh.

(1) [See Nootje 309.]
Of Confirmation.

which the tenant holdeth of him, but hee cannot reserve to him new services.

THIS upon that which hath beene said before in the next preceding Section is evident, and needeth no further explication.

Sect. 540.

T**EM, si soit seignior, † mesme, et tenant, et le tenant est un abbe, que tient de mesme per certaine service annuellement, le quel n'ait aucun cause d’avoir acquittance envers son mesme, pur porter briefe de mesme, || &c. en cest cas, si le mesme confirme l’estate que l’abbe ad en la terre, a aver et tener la terre a luy et ses successors en frankalmoigne, &c. en cest cas le confirmation est bane, et adonques l’abbe tiendra de le mesme en frankalmoigne. Et la cause est, pur ce que, nul novel service est reserve, car toutes les services especialment specifies sont extinctes, et nul rent est reserve a luy, forsque ** que l’abbe tient de luy la terre, et ceo est †† il devant la confirmation; car celuy que tient en frankalmoigne ne doit faire aucun corporall service; issint †† que per tiel confirmation il appiert, que le mesme ne reserva a luy aucun novel service, mes que les tenements se rissent tenus de luy come ceo fuit devant.

[306. b. ] Et en cest case l’abbe avera un briefe de mesme, s’il soit distrinie en son default, per force de le dit confirmation, lou per case il ne puissoit aver * un briefe advenant, &c.

ALSO, if there be lord, mesne’ and tenant, and the tenant is an abbot, that holdeth of the mesne by certaine services yearly, the which hath no cause to have acquittance against his mesne, for to bring a writ of mesne, &c. in this case, if the mesne confirmes the estate that the abbot hath in the land, to have and hold the land unto him & his successors in frankalmoigne, or free alms, &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 service is reserved, for all the services specially specified bee extinct, and no rent is reserved 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 service; so that by such confirmation it appeareth, the mesne shall not reserve unto him no new service, but that the lands shall bee holden of him as it was before. And in this case the abbot shall have a writ of mesne, if bee bee distracted in his default, by force of the said confirmation, where per case bee might not have such a writ before.

HERE our author having seene the former booke puts the his case, that the mesne maketh the confirmation to hold in frankalmoigne, and not the lord paramount.

† mesne—mesme, L. and M. but not in Rob.  
§ per case added L. and M. and Rob.  
‖ &c. not in L. and M. nor Rob.  
¶ al mesme not in L. and M. nor Rob.  
** que not in L. and M.  
† † il—a lui, L. and M. and Rob.  
†† que not in L. and M. nor Rob.  
* un—tice, L. and M. and Rob.

"Et en cest cas l'abhé avera briefe de mesne." Here is to bee noted, that upon a confirmation to hold in freemeigne there lyeth a writ of mesne, albeit the cause of acquittall beginne after the seignior. And so upon such a confirmation the tenant shall have, contraformam feoffamenti.

Sect. 541.

ITEM, si jeo sue seisse d'un vil- leine come de villein in gros, et un alter luy pret hors de ma possession, enclamant luy d'estre son villeine, la ou il n'avoyt aucun droit d'aver luy come son villeine, et puis jeo confirma a luy l'estate que il ad en mon villeine, est confirmation semble void, pur cec que nul poit aver possession de un home come de villeine en grosse, si non celuy que ad droit de luy aver come son villeine en grosse. Et issint entant que celuy a que le confirmation fuit fait, ne fuit seisse de luy come de son vil- leine a le temps de confirmation fait, tel 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 have him as his villeine, and after I confirme to him the estate which hee hath in my villeine, this confirmation seemeth to be void, for that none may have possession of a man as of a villeine in grosse, but he which hath right to have him as his villeine in grosse. And so inasmuch as he 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 void.

HERE is to be observed a diversity betweene the custodie 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 bee put out of possession of the custodie of his ward, but not of his villeine in grosse, no more than a man can bee of his prisoner which he hath taken in warre.

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 (1). But of a villeine in grosse he cannot at all be disseised [u]. Non valet con- firmatio nisi ille qui confirmat sit in possessione ret vel juris unde fieri debet confirmatio, & eadem modo uis ille cui confirmatio sit, sit in possessione.

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 recovery of the manor the villeine is recovered. But if another doth take away my villeine in grosse or regardant, he gaineth no possession.

† la ou il n'avoyt aucun droit d'aver luy come son villeine, not in L. and M. nor Roh.

(1) See ant. 239. note 1.
possession of him. And this doth well appeare by the wrat of 

[307. a.] *nativum habendo* for that wrat is not brought against any person in 
certaine (because no man can gaine the possession of him.) 

But the wrat is to this effect: *Rex vic* salutem. *Præcipientem 
tibi, quod justè et sine dilatatione habere facias, A. B. nativum 
et fugitivum suum, &c. ubi nuncque inventus fuerit, &c et prohibemus 
super forisacturam nostram ne quis car injustè delincat; so as 
detaine him one may, but to possesse himselfe of him, and to disposses 
sess the lord, he cannot.

And if a man might have beene dispossessed of a villeine in 
grosse, or of a villeine regardant (unless he be dispossessed of the 
manor also, as hath beene said,) the law would have given a re-
medie 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 manor whereunto the villeine is re-
gardant, he is out of possession of his villeine, and so an advowson 
appendant, and the like. Hereby (Littleton putting his case of 
a villeine in grosse) and by divers authorities a point controverted in 
our bookes [*] is resolved, viz. that by the grant of the manor 
without saying *cum pertinentia*, the villeine regardant, advowson 
appendant, and the like, doe passe: for if the disseiser shall gaine 
them as incidents to the manor, whose estate is wrongfull, *a multo 
fortiori* the cooffee, who commeth to his estate by lawfull convey-
ance, shall have them as incidents. But where the entrice of the 
disseisee is lawfull, he may seise the villeine regardant, or present 
to the advowson, &c. before he enter into the manor: otherwise 
it is where his entrice is not lawfull; and so are the ancient authors 
[b] to be intended (1).


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Sect. 542.

**MES en cest cas, si tiels paroles** 

wurent en le fait,* &c. Scias me dedisse et concessisse † tali, &c. 

talem villanum meum, c'est bone; mes 

eco urera per force et voy de grant, et 

nemy per voy de confirmation, &c.

**BUT in this case, if these words** 

were in the deed, &c. Scias me 
dedisse et concessissetali, &c.talem vil-

lanum meum, this is good; but this 
shall ensure by force and way of grant, 
and not by way of confirmation, &c.

HERE it is to be observed, 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 have an estate in feem 
or fee tail for life or yeeres. And therefore Littleton is here to be 
understood, that in the grant there were these words (*his heires*) or 
else nothing passed but for life, as of other things that lie in 
grant.

* &c. not in L. and M. nor Roh. † tali not in L. and M. nor Roh.

(1) See the Chapter on Villenage.

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2 H. 6. F. N. R. 

77. a. b.

24 E. 3. 

Discont. 10.
Sect. 543.

**ET** 
ascus falsoe ceux verbe dedi et concedi aceront per voy d'ex
tinguishment del chose done ou grant; 
sicomo un 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 uerera a le tenant per 
voyn d'extinguishment, car per cel 
grant le rent est extinct, &c.

AND sometimes these verbes 
dedi et concedi shall enure by 
way of extinguishment of the thing 
given or granted; as if a tenant hold 
of his lord by certeine rent, and the 
lord grant by his deed to the tenant 
and his heires the rent, &c. this shall 
enure to the tenant by way of extin-
guishment, for by this grant the rent 
is extinct, &c.

And this grant of the rent shall enure by way of release.

Sect. 544. [307. b.]

**EN** mmesme le manner est lou * un 
ad un rent charge hors de cer-
taine terre, et il granta al tenant de 
la terre le rent charge, &c. Et la cause 
est, par ceo que appiert, per les paroles 
del grant, que le volun le donor est, 
que le tenant acera le rent, &c. Et 
etant que il ne puit aver ne percever 
aucum rent hors de son terre demesme, 
pur ceo le fait serra intendue et pris 
pur le plusis advantage et availle pur 
le tenant que puit estre pris, et ceo 
est per voy d'extinguishment.

BUT if the grantee of the rent-charge granteth it to the tenant 
of the land and a stranger, it shall be extinguished but for the 
moitie: and so it is of a seigniorie.

Sect. 545.

**ITEM**, si jeo lessa terre a un home 
pur terme d'ans, et puis jeo con-
forma son estate sans plusz parolz 
mitter en le fait, per cel il n'ad plus 
greinder estate que pur terme d'ans, 
sicome il avoit ade vant.

ALSO, if I let land to a man for 
terme of yeares, and after I 
confinme his estate without putting 
more words in the deed, by this he 
hath no greater estate than for 
terme of yeares, as he had before.

† Ec—*item*, L. and M. and Roh.

* un—*home*, L. and M. and Roh.
Lib. 3. Of Confirmation. Sect. 546, 547.

Sect. 546.

MES sijeorelessa a luy mon droit que jeo aye en la terre sans plus paroles mitter en le fait, il ad estate de frankenemente. † Issaint poyes entend, mon fils, divers grands diversités prenter releases et confirmations.

But if I release to him all my right which I have in the land without putting more words in the deed, he hath an estate of freehold (1). So thou maist understand (my sonne) divers great diversities betweene releases and confirmations.

In these two Sections is the seventh case wherein a release and confirmation doe differ.

[308. a.]

Sect. 547. (Art. 306.)

ITEM, si jeo esleant deins age lessa terre a un auter pur terme de xx. ans, et puis il gruntu le terre a un auter pur terme de x. ans, issaint il granta forsque parcel de son terme: en cest case quant jeo sue de pleine age, si jeo releessa al grantee de mon lessee, &c. cest release est vayd, pur ceo que il n'y ad aucun privitie prenter luy et moy, &c. Mes si jeo confirme son estate, donque cest confirmation est bone. Mes si mon lessee graunta tout son estate a un auter, donques mon release fait a le grantee est bone et effectual.

Also, if I being within age let land to another for term of xx. years, and after hee granteth the land to another for term of x. years, so hee granteth but parcel of his termes: in this case when I am of full age, if I release to the grantee of my lessee, &c. this release is void, because there is no privitie 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 (1).

HERE are two things to be observed: First, that the lease of an enfant in this case is not void but voidable. Secondly, this is the eighth case put by Littleton, wherein the release and confirmation doe differ.

† paroles not in L. and M. nor Roh. † et added in L. and M. and Roh.

(1) [See Note 270.]

[308. a.]

(1) [See Note 271.]
Of Confirmation. Sect. 548, 549.

Sect. 548.

*ITEM*, si home granta un rent charge issuing hors de son terre a un auter pur terme de son vie, et puis il confirma son estate en le dit rent, a avc et tener a luy en fee taile ou en fee simple ; cest confirmation est void quant a enlarger son estate, pur ceo que cely que confirme n'avait aucun reversion en le rent.

ALSO, if a man grant a rent-charge issuing out of his land to another for term of his life, and after hee confirmeth his estate in the said rent, to have and to hold to him in fee taile or in fee simple; this confirmation is void as to enlarge his estate, because hee that confirmeth hath not any reversion in the rent.

HERE the diversitie is apparant, betweene a rent newly created and a rent in esse : which needeth no explication. Only this is to be observed, that Littleton intendeth his deed of confirmation not to containe any clause of distresse ; for otherwise, as to the confirmation the deed is void, but the clause of distresse doth amount to a new grant, as in the Chapter of Rents hath beeene said.

Sect. 549.

MES si home soit seise en fee de rent service ou de rent charge, et il grant le rent a un auter pur terme de vie, et le tenant attirna, et puis il confirma l'estate de le grante in fee taile, ou en fee simple, cest confirmation est bone, quant a enlarger son estate solonques les paroles le confirmation, pur ceo que cely que confirmast * al temps de confirmation avoir un reversion del rent.

BUT if a man be seised in fee of rent service or rent[308 b.] charge, 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 reversion of the rent.

HERE is the eighth case wherein the release and confirmation doth agree; and it is here to be observed, that to the grant of the estate for life, Littleton doth put an attornment, 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 Attornment, Sect. 556, 557.

*Pestate added L. and M.
Of Confirmation.

Sect. 550.

MES en cas avantdit lou home grantit un rent charge a un an-
ter pur terme de vie, s'il voile que le grantee averoit estea en le taile, ou en fee, il covient que le fait de grant del rent charge pur terme de vie, soit surrender ou cancell, et donques de fais un novel fait d'autiel rent charge, a-aver et percever a le gran-
tee en le taile ou en fee, &c. Ex pau-
cis † plurima concepits ingenium.

BUT in the case aforesaid where a man grants a rent charge to another for term of life, if he will that the grantee should have an es-
tate in taile, or in fee, it behoveth that the deed of grant of the rent charge for term of life be surren-
dred or cancelled, and then to make a new deed of the like rent charge, to have and perceive to the grantee in taile or in fee, &c. Ex paucis plurima concepits ingenium.

"SURRENDER ou cancel." (1) Note by cancellation of the deed the rent which lieth only in grant ceaseth (as here it appeareth) as well 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 surrendered or cancelled, is lest 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 distreime 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.

† plurima concepits ingenium—dictis, &c. L. and M.
(1) See ante 226. note 2.
ATTOREMENT is, as if there bee lord and tenant, and the lord will grant by his deed the services of his tenant to another for terme of yeares, or for terme of life, or intailé, 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 attorneament 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 attorneament is, to say, Sir, I attorne to you by force of the said grant, or I become your tenant, &c. or to deliver to the grantee a penny, or halfpenny, or a farthing, by way of attorneament.

And the reason why an attorneament is requisite, is yeeded in old books to be, Si dominus attornare possit servitium tenentis contra voluntatem ipsius tenentis, et videtur quod non.

Il covient que le tenant attorne al grantee en la vie del grantor, &c.
grantor dieth before attornment, the seigniorie, rent, reversion, or remainder descend to his heir; and therefore after his decease the attornment cometh too late: so likewise if the grantee dieth before attornment, an attornment to the heir is void, for nothing descended to him: and if he should take, he should take it as a purchasor, whereof the heirs were added but as words of limitation of the estate, and not to take as purchasers.

But if the grant were by fine, then albeit the coounser or consue dieth, yet the grant is good. For by fine levied the state doth passe to the coounser and his heires; and the attornment to the coounser or his heires at any time to make privitie to distraine is sufficient. But all this is to be taken as Littleton understood it, viz. of such grants as have their operation by the common law. For since Littleton wrote, if a fine be levied of a seigniorie, &c. to another to the use of a third person and his heires, he and his heires shall distraine without any attornment, because he is in by the statute of 37 H. 8 cap. 10. by transferring of the state to the use, and so he is in by act in law.

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 seigniorie, &c. to another, the seigniorie shall passe to him without any attornment; and so it is of a rent, a reversion, and a remainder. So as the law is much changed, and the ancient privilege of tenants, donesees, and lessees much altered concerning attornment since Littleton wrote.

But if the consuee of a fine before any attornment by deed indented and inrolled, bargaineth and selleth the seigniorie to another, the bargainee shall not distraine, because the bargainor could not distraine. Et sic de similibus; for nemo potest finium juris ad altum transferre quum ipsus habet. Vide Sect. 149. where upon a recovery, the recoveror shall distraine and avow without attornment.

A grant to the king, or by the king to another, is good without attornment, by his prerogative.

"Attornment est sui auctor en effect, &c." It is to be understood that there be two kines of attornements, viz. an attornment in deed or express, and an attornment in law or implicit. Of attornement express or in deed Littleton speaketh here, and of attornment 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 attornment being an agreement or consent to the grant, &c.) he cannot agree or consent to that which he knoweth not. And the usual pleading is, to which grant the tenant attorned. And therefore if a baily of a manner who used to receive the rents of the tenants, purchase the manor, and the tenants having no notice of the purchase continue the payment of the rents to him, this is no attornment. So if the lord levee a fine of the seigniorie, and by fine take backe an estate, in fee, the tenant continueth the payment of the rent to the first consueor without notice of the fines, this is no attornment. But it is to be knowe, that there be two kinde of notices, viz. a notice in deed or express, whereof Littleton here speaketh, when he saith, that the tenant agreeth to the grant, and a notice in law or implied, whereof Littleton hereafter speaketh in this chapter.

"Del"
"Del grant fait per son seignior." Here is to be seen when the thing granted is altered, what becometh of the attornment.

If there be lord, mesne and tenant, and the mesne grant over his messalite by deed, the lord releaseth to the tenant, whereby the mesnalitie is extinct, and there is a rent by surplusage, an attornment to the grant of this rent secke is good, although the quality of that part of the rent is altered, because it is altered by act in law.

If a reversion of two acres be granted by deed, and the lessor before attornment levie a fine of one of them, and the tenant attorne to the grantee by deed, this is good for the other acre.

[a] If the reversion 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 attornment in law, if the reversion of three acres be granted, and the lessee surrender one of the acres to the grantee, this attornment shall be good for the whole reversion of the three acres according to the grant.

"Et le tenant agree." Hereafter in this chapter Litleton doth teach what manner of tenant shall attorne.

"Agrea per parol, &c." And so hee may, and more safely by his deed in writing.

"Sicome adire a le grantee, &c." Here is to be seen to what manner of grantees the attornment is good. Regularly the attornment must be according to the grant, either expressly or impliedly. Of the first Litleton hath here spoken.

Implyedly, as if a reversion be granted towbey by deed, and the lessee attorne to one of them according to the grant,\[310. 2\] this attornment is good, but not to vest the reversion only in him to whom attornment is made; but it shall enure to both the grantees, for that is according to the grant, and for that it cannot vest the reversion only in him to whom the attornment is made. And so it is if one grantee dieth, an attornment to the survivor is good.

If the lord by deed his seigniorie to A. for life, the remainder to B. in fee, A. dieth, and then the tenant attorne to B. this attornment is void, because it is not according to the grant; for then B. should have a remainder without any particular estate.

If a reversion be granted to a man and a woman, they are to have moitites in law; but if they entermaire and then attornment is had, they shall have no moitites (and yet by the purport of the grant they are to have moitites), because it is by act in law.

If a feme grant a reversion to a man in fee, and marry with the grantee, the lessee attorne to the husband, this is a good attornment in law to the husband.

If a reversion be granted by deed to the use of I. S. and the lessee hearing the deed read, or having notice of the contents thereof attorne to cestui que use, this is an implied attornment to the grantee.

If a reversion be granted for life, the remainder in tailie, the remainder in fee, the attornment to the grantee for life shall enure to them in the remainder, to vest the remainder in them.

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 remainder after his death, yet the attornment is good to them all:

for
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for having attorned to the tenant for life, the law (which he cannot control) doth vest all the remainder. And of this more shall be said hereafter in this chapter.

Littleton here putteth five examples of an expresse attornment, but of them the last is the best, because the care is not only a witseness of the words, but the eye of the delivery of the penny, &c. and so there is dictum et factum. And any other words which import an agreement or assent to the grant, doe amount to an attornment. And albeit these five expresse attornements be all set down by Littleton, to be made to the person of the grantee [b], yet an attornment in the absence of the grantee is sufficient; for if he doth agree to the grant either in his presence or in his absence, it is sufficient.

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ITEM, si le seignior grant le service de son tenant a un home, et puis per un fait portant un dureme date il grant par mesmes les services a un autre, et le tenant attorne a le second grantee, ore le * dit grantee ad les services; et comen que apres le tenant voile attornar a le primer grantee, c'est clerement void, &c.

ALSO, if the lord grant the service of his tenant to one man, and after by his deed bearing a later date hee grant the same services to another, and the tenant attorne to the second grantee, now the said grantee hath the services; and albeit afterwards the tenant will attorne to the first grantee, this is clearly void, &c.

HERE it is to be observed, that Littleton 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 grant; but in that case the attornment to the first is countermanded. And so it is if a reversion expectant upon an estate for life be granted to another in fee, and after the grantor before attornment conforme the estate of the lessee in taille, the attornment to the grantee for the fee simple is void.

In the same manner, if a reversion upon an estate for yeeres be granted in fee, and the lessor conforme the estate of the lessee for life, he cannot afterwards attorne.

[310. b.] If a feme sole maketh a lease for life or yeares, reserving a rent, and granteth the reversion in fee, and taketh husband, this is a countermand of the attornment.

Where our author putteth his case of the whole reversion, if two coparceners bee of a reversion, and one of them granteth her moiety by fine, the conuese shall have a quid juris clamat for the moiety.

If in the case that our author here putteth of several grantees, if the tenant attorne to both of them, the attornment is void, because it is not according to the grant. If a reversion be granted for life, and after it is granted to the same grantee for yeares, and the lessee attorneth

* dit-second, L. and M. and Roh.
attorneth to both grants, it is void for the incertaintie: ad multô fortiori, if the lord by one deed grant his seigniorie to I. bishop of London and to his heires, and by another deed to I. bishop of London and to his successors, and the tenant attorneth to both grants, the attornement is void; for albeit the grantee be but one, yet he hath severall capacities, and the grants are severall, and the attornement is not according to either of the grants.

But if A. grant the reversion of Black-Acre or White-Acre, and the lessee attorneth to the grant, and after the grantee maketh his election, this attornement is good; for albeit the state was incertaine, yet he attorneth to the grant in such sort as it was made: and so note a diversity betweene one grant and several grants, and observe in this case an attornement good in expectation, and yet nothing passed at the time of the attornement, but by the election subsequent.

Sect. 553.

Item, si homo soit seised de un manor, quel manor est parcel en demesne, et parcel en service, s'il voilé aliener cet manor a un auter, il convient que per force del alienation, que tous les tenants que teignont del alienor come de son manor attornent al attornement les services demurrunt continuellement en l'alienor, forprise tenants a volunt; car il ne besoigne que tenants a volunt attournent sur tiel alienation, &c.

Also, if a man be seised of a manor, which manor is parcel in demesne, and parcel in service, if he will alien the manor to another, it behooveth that by force of the alienation, all the tenants which hold of the alienor as of his mannor doe attorn to the aliee, or otherwise the services remaine continually in the alienor, saving the tenants at will: for it woldeth not that tenants at will doe attorne upon such alienation, &c.

Here it is to bee observed, that when a man maketh a feoffment of a manor, the services doe not passe, but remaine in the feoffor until the freeholders doe attorn; and when they doe attorn, the attornement shall have relation to some purpose, and not to other. For albeit the Attornement bee made, many years after the feoffment, yet it shall have relation to make it passe out of the feoffor ab initio even by the liverie upon the feoffment, but not to charge the tenants with any meane arrearages, or for waste in the meane time, or the like.

If a reversion of land bee granted to an alien by deed, and before attornement the alien is made deniased, and then the attornement is made, the king, upon office found, shall have the land: for as to the estate betweene the parties, it passeth by the deed ab initio (1).

If a man plead a feoffment of a manor, hee need not plead an attornement of the tenants; 'bit (if it be materiall) it must be denied or pleaded of the other side.

\* &c. added L. and M. and Boh.
† &c. added in L. and M. and Boh.
‡ pur ces que mesmes les terres et tenements in Boh. and in MSS.

(1) [Sec Note 273]
And upon consideration had of all the books touching this point, whether the services of the freeholders doe passe, wherein there have been three several opinions, viz. some have holden that the services doe passe in the right by the livery as parcel of the manor, but not to avow without attornment, as in the case of the fine. And others have holden, that they both passe in right and in possession to distreine without attornment. And the third opinion is, that in this case the said services passe neither in possession nor in right, but until attornment remaine continually in the alienor, as Littleton here holdeth. And so it was resolved Pasch. 15 Edw. between Brasibitch and Barwell, according to the opinion of our author. And I never yet knew any of Littleton's cases (albeit I have knowne many of them) to be brought in question, but in the end the judges concurred with our author.

And where our author speaketh of the attornment of the freeholders, if the lord make a lease for yeares or for life of a manor, and the freeholders attorne to the lessee, if after the reversion of the manor be granted, the attornment of the lessee for yeares or life shall bind the freeholders: for by their former attornment, they have put the attornment into the mouth of the lessee.

"Forspriez tenant a volunt &c." Here is implied tenant at will or by copie of court roll according to the custom of the manor, 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 attornment (1).

**Sect. 554.**

**ITEM,** si soient seignior en tenant, et le tenant lessa la terre a un autre par terme de vie, ou dona la terre en le taile suivant le reversion a luiy, \&c. si le seignior en tiel cas granta son seigniory a un autre, il corvient que cely en le reversion atturro al grantee, et nemy le tenant a terme de vie, ou le tenant en le taile, pur ceo que en cest cas cely en le reversion est tenant a seignor, et nemy le tenant a terme de vie, ne le tenant en le taile.

A**L**SO, if there bee lord and tenant, and the tenant letteth the land to another for term of life, or giveth the land in taile saving the reversion to himselfe, \&c. if the lord in such case grant his seigniory to another, it behoveth that hee in the reversion 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 reversion 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 seigniorie, rent service, reversion or remainder, but he that is immediately privie to the grantor; and because in this case there is no privtie betweene the lord and the tenant for life,

(1) For the difference between seisin and attornment, see Brediman's case, 6 Rep. 56 b.

life, or donee in tail, but only between the lord and him in the reversion; for in this case the attornment of him in the reversion only is good.

"Savant le reversion a luy, &c." That is to say, without limitation of any remainder over; and this is but to make his opinion plaine as to the point that he puttheth it.

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EN meeme le manner est lou sont seigniour, meene et tenant, si le seigniour voile grantyer les servises del meene, comset que il ne fait aucun mention en son grant del meene, ancure il cervient que le meene atturna, &c. et ney le tenant pervaile, &c. pur cee que le meene est tenant a luy, &c.

IN the same manner is it where there are lord, mesne and tenant, if the lord will grant the services 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 pervaile, &c. for that the mesne is tenant unto him, &c.

This standeth upon the same reason that the next precedent case did.

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MES autrement est lou certaine terre est charge d'un rent charge ou rent seck; car en tel case si celuy que ad le rent charge cee grant a un autre, il convient que le tenant del francktement atturna al grante, pur cee que le francktement est charge ou le rent, &c. Et en rent charge ney avowrie doit etre fait sur aucun person pur le distresse prise, &c. mes il avowera le prise bone et drouiture, comme en terres ou tenementsissant charges a son distresse, &c.

BUT otherwise it is where certaine land 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 behooveth that the tenant of the freehold attorn to the grante, for that the freehold is charged with the rent, &c. And in a rent-charge, no avowrie ought to be made upon any person for the distress taken, &c. but hee shall avow the prisel to bee good and rightfull, as in lands or tenements so charged with his distress, &c.

HERE is to be observed a diversitie betweene a rent service and a rent charge, or a rent secke; for as to the rent service, no man (as hath beene said) can attorne, but he that is privie; so in case of a rent charge, it behooveth that the tenant of the freehold doth attorne to the grante, without respect of any privite. And therefore the disseisor only, 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 service, the attornment of a disseisee sufficeth.

If

*si—et L. and M. and Roh.  † &c. not in L. and M. nor Roh.
If there be lord and tenant by homage, fealtie and rent, the tenant is disseised, the lord granteth the rent to another, the disseisee attorney, this is void: but if he had granted over his whole seigniorie, the attornment had beene good; and the reason of this diversitie is here given by our author, for that when the rent was granted only, it passed as a rent secke, and consequently the disseissor being terre-tenant, must attorne. But when the seigniorie is granted, then the disseisee in respect of the privitie may attorne.

"Covient 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 he that hath the rent charge or rent secke granteth it over, the tenant for life shall attorne, for he is tenant of the freehold, according to the expresse saying of our author, and (as hath bee said) there needeth no privitie.

And it was holden by Dyer chiefe justice of the court of common pleas, and Mounson justice, in the argument of Bracchbridge's case abovesaid, and not denied, that if he that hath a rent charge granteth it over for life, and the tenant of the land attorne thereunto, and after he granteth the reversion of the rent charge, that the grante for life may attorne alone; and that these words of Littleton are to be understood when a rent charge or rent secke is granted in possession; and therewith agreeeth 46 E. 3. where it appeareth, that the quid juris clamat, in that case, did lie against the grante for life.

A man maketh a lease for life, and after grants to A. a rent charge out of the reversion, A. granteth the rent over, he in the reversion 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 grante doth not extinguish the rent. And Littleton is to be understood, that the tenant of the freehold must attorne when the freehold is charged.

"Et en rent charge nul avowrie doitestre fait sur aucune person, &c." This is the reason that Littleton giveth of the difference betweene the rent service and the rent charge. Now it may bee said, that this reason is taken away by the statute of 21 H. 8. for by that statute the lord needs not avow for any rent or service upon any person in certaine; and then by Littleton's reason there needeth no privitie to the attornment of a seigniorie; for (say they) cessante causa vet ratione legis, cessat lex, as at the common law no aid was grantable of a stranger to an avowrie: because the avowrie was made of a certaine person: but now the avowrie being made by the said act of 21 H. 8. upon no person, therefore the reason of the law being changed, the law itselfe is also changed; and consequently in an avowrie according to that act, aid 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 bee said) may take benefit of the statute, yet may he avow still at his election upon the person of his tenant. And albeit the manner of the avowrie be altered, yet the privitie (which is the true cause of the said difference) remaineth still as to an attornment.

"Rent charge, &c." It is to be observed, to what kind of inheritances being granted, an attornment is requisite. And in this chapter
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chapter Littleton speaketh of five. First, of a seigniorie, rent service, &c. Secondly, of a rent charge. Thirdly, of a rent seck. And hereafter in this chapter of two more, viz. of a reversion and remainder of lands; for the tenant shall never need to attorne but where there is tenure, attendance, remainder, or payment of a rent out of land. And therefore if an annuillet, common of pasture, common of estovers, or the like, be granted for life or yeeres, &c. the reversion may be granted without any attornment; and albeit sometimes in some of these cases, or the like, an attornment be pleaded, yet it is surplusage, and more than needeth, because in none of them there is any tenure, attendance, remainder, or payment out of land.

Sect. 557.

Item, si soit seignior et tenant, et le tenant lesa son tenement a un auter pur terme de vie, le remainder a un autre en fee, et puis le seignior granta les services a un auter, &c. et le tenant a terme de vie attoripa, ceo est assetz bone, pur ceo que le tenant a terme de vie est tenant en cest case al seignior, &c. et cely en le remainder ne poit estre dit tenant al seignior, quan c a entent, forcoes apres la mort le tenant a terme de vie: uncere en cest case si cely en le remainder morust sans heire, le seignior axera le remainder per coy d'escheate, pur ceo que coment que le seignior en tiel cas covient d'avowier sur le tenant a terme de vie, &c. uncere tout l'entier tenement, quant a toutes les esidades de franktenement ou de fee simple, ou autamment, &c. en tiel cas sont ensemble tenus de le seignior, &c.

† Mes nemy de faire avowrie sur eux tous ensemble. M. s. II. 6.

Also, if there be lord and tenant, and the tenant letteth his tenement to another for termes of life, the remainder to another in fee, and after the lord grant the services to another, &c. and the tenant for life attorne, this is good enough, for that the tenant for life is tenant in this case to the lord, &c. and he in the remainder cannot be said to be tenant to the lord, as to this intent, untill after the death of the tenant for life: yet in this case if hee in the remainder dieth without heire, the lord shall have the remainder by way of escheate, because that albeit the lord in such case ought to avow upon the tenant for life, &c. yet the whole entire tenement, as to all the estates of the frechold or of fee simple, or otherwise, &c. in such case are together holden of the lord, &c.

But not to make avowrie upon them all together. [312b.] M. 3. H. 6.

"Et le tenant a terme de vie attoripa, &c." For he that is (as hath beene said) privie 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; unless it be that they in the remainder ought to have acquittall, or other privilege (whereof they should be prejudiced); and then albeit an attornment be had

† This paragraph not in L. and M. nor Roh.

* covient d'avowier—d'avowiera, L. and M. and Roh.
Lib. 3. Of Attornment. Sect. 558.

had to the tenant for life, and he acknowledge the acquittal, &c. yet after his decease, he in the remainder shall not distreyne untill he acknowledge the acquittal, notwithstanding the attornment of the tenant for life,

"Avera le remainder per voy d'esheat." 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 over; and of this opinion is Littleton [a] himselfe in our books. But otherwise it is of a rent charge in fee; for if that be granted for life, and after he in the reversion purchase the land, so as the reversion of the rent charge is extinct, yet the grantee for life shall enjoy the rent during his life, for there is no tenure or attendance in this case.

"Mes nemy de faire avowrie." This is added to Littleton, but it is consonant to law, and the authoritie truly cited.

Sect. 558.

ITEM, si soit seigniour et tenant, et le tenant lessa les tenements a un feme par terme de vie, le remainder ouster en fee, et la feme prent baron, et puis le seignior granta les services, &c. a le baron et ses heires; en cest case le service est mis en suspence durant le coverture. Mes si la feme devicivaient le baron, le baron et ses heires averont le rent de ceux en le remainder, &c. Et en eco case il ne besoigne aucun attornment per parol, &c. pur eco que le baron que doit auerir, accepta le faut del grant de les services, &c. le quel acceptance est un attornment en la ley.

ALSO, if there be lord and tenant, and the tenant letteth the tenements to a woman for life, the remainder over in fee, and the woman taketh husband, and after the lord grant the services, &c. to the husband and his heires; in this case the service is put in suspence during the coverture. But if the wife die living the husband, the husband and his heires shall have the rent of them in the remainder, &c. And in this case there needeth no attornment by parol, &c. for that the husband which ought to attorne, accepted the deed of grant of the services, &c. the which acceptance is an attornment in the law.

"Le quel acceptance est un attornment en la ley, &c." Littleton having spoken (as hath beene said) of attornements in deed, so expresse, now cometh to speake of attornements in law, or implied; and having before set downe five expresse attornements in deed, doth in this chapter enumerate seven attornements in law. Here it is to be understood, that the expresse attornment of the husband will binde the wife after the coverture, and in as much as this acceptance of the grant is an attornment in law, without a word of attornment the seigniorie shall passe. And his is the first example that Littleton putteth of an attornment in law,


law, which amounteth to an expresse attornment, for that it is an
agreement to the grant.

If the lord grant his seigniorie to the tenant of the land, and to a
stranger, and the tenant accept the deed, this acceptance is a good
attornment to extinguish the one moitie, and to vest the other
moitie in the grantee, as hath beene said.

Sect. 559.

In the same manner it is, if there
be lord and tenant, and the tenant
taketh wife, and after the lord grant
his services to the wife and his heires,
and the husband accepteth the deed;
in this case after the death of the
husband the wife and her heires shall
have the services, &c. for by the ac-
cceptance of the deed by the hus-
bond, this is a good attornment,
&c. albeit during the coverture the
services shall be put in suspence, &c.

Here is the second example that Littleton putteth of an at-
tornment in law, and standeth upon the former reason.

"Sont mise en suspence." Suspence commeth of suspender, and in
legall understanding is taken when a seigniorie, rent, profit appren-
der, &c. by reason of unitie of possession of the seigniorie, rent, &c.
and of the land out of which they issue, are not in case for a time, et
tunc dormiant, but may be revived or awaked. And they are said
to be extinguished when they are gone for ever, et, tunc moriuntur,
and can never be revived; that is, when one man hath as high and
perdurable an estate in the one as in the other.

Sect. 560.

ALSO, if there be lord and te-
nant, and the tenant grant the
tenements to a man for term of his
life, the remainder to another in fee, if
the lord grant the services to the
tenant for life in fee, in this case the
tenant for term of life hath a fee in
the services; but the services are put
in suspence during his life. But the
heires of the tenant for life shall have

* del fait * not in L. and M. nor Rolt.
† en fee not in L. and M. nor Rolt.
‡ le tenant a terme de vie, not in L. and M. nor Rolt.
services apres son decease, &c. Et en cest cas il ne besoigne &c. attournement; car per l'acceptance del fait de ceuy que doit attourner, &c. est ceo attournement de luy mesme.||

HERE is the third case that Littleton putteth of an attornment in law. And it is to bee observed, 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 remainder shall take benefit, yet the law shall never 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 be disherited of the rent; and therefore Littleton here saith, that the heires of the grantee shall have the seigniorie after his death. And here is an attornment in law to a grant suspended that cannot take effect in the grantee so long as he liveth, but shall take effect in his heires by descent; for the inheritance of the seigniorie was in the tenant for life, and the suspension only during his life.

Sect. 561.

MES lou te tenant ad cygrand et haut estate en les tenements si come le seignior ad en le seigniorie; en tel case, si le seignior graunta le services al tenant en fee, eco urera per voy d'extinguishment. Causa patet.

BUT 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 services to the tenant in fee, this shall enure by way of extinguishment. Causa patet.

HERE Littleton intendeth not onely as great and high an estate, but as perdurable also, as hath beene said; for a disseisor or tenant in fee upon condition hath as high and great an estate, but not so perdurable an estate, as shall make an extinguishment.

Sect. 562.

ITEM, si soyent seignior et tenant, et le tenant fait un leas a un home par terme de sa vie, savant le reversio a luy, si le seignior granta le seigniorie

ALSO, if there bee lord and tenant, and the tenant maketh a lease to a man for terme of his life, saving the reversion to himselfe, if the
Of Attornment.  

Sect. 563.

The lord grant the seigniory to tenant for life in fee; in this case it behoveth that he in the reversion must attorne to the tenant for life by force of this grant, or otherwise the grant is void, for that he in the reversion is tenant to the lord, &c.

Yet hee shall not hold of the tenant for life during his life. Causa patet, &c.

Here in this case he in the reversion of the tenancy must attorne, because he is the tenant to the lord; and yet the seigniorie shall be suspended during the life of the grantee, because he hath an estate for life in the tenancie, but his heires shall enjoy the seigniorie by descent.

"Uncore il ni tient, &c." This is added, and not in the original, and is against law, and therefore to be rejected. [314. a.]

"Tenant al seignior, &c." Here is to bee understood a diversity 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 seigniorie is suspended but for termes 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 have no rent, service, wardship, release, harriot, or the like, because these belong to the possession: but if the tenant dieth without heire, the tenancie shall escheat unto the grantee, for that is in the right; and yet when the seigniorie is revived 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 have the wardship of the heire. Also in the case that Littleton here puttheth, albeit the seigniorie be suspended but for life, yet some hold that he cannot grant it over, because the grantee tooke it suspended, and it was never in case in him. But if the tenant make a lease for yeares or for life to the lord, there the lord may grant it over, because the seigniorie was in case in him, and the fee simple of the seigniorie is not suspended. But if the lord disese the tenant, or the tenant esfeoffe the lord upon condition, there the whole estate in the seigniorie is suspended, and therefore he cannot during the suspension take benefit of any escheat, or grant over his seigniorie.

Sect. 563.

Item, si soient seignior et tenant, et le tenant tient del seignior per xx. maners des services, et le seignior grant a son seigniory a un auter; si le tenant

also, if there bee lord and tenant, and the tenant holdeth of the lord by xx. manner of services, and the lord grant his seigniory to another;

* This paragraph not in L. and M. nor Roh.
Of Attornment.

Sect. 564.

Here it appeareth that an attornment being made for parcell, is good for the whole; for seeing he hath attorned for part, it cannot bee void for that, and good it cannot be unlesse it be for the whole: but of this sufficient hath bene said before in this chapter.

"Paya ascun parcell des services." Here is the fourth example of an attornment in law; for payment of any parcell of the services is an agreement in law to the grant.

"Coment que l'entent del tenant suit d'attornier, &c." Quia intento inserire debet legibus, non leges intentioni. And yet as farre as it may stand with the rule of law, it is honourable for all judges to judge according to the intention of the parties, and so they ought to doe. And of this somewhat in this chapter hath bene said before.

Sect. 564.

Item, si soit seignior et tenant, et le tenant tient del seignior per plusieurs maners des services, et le seignior grant les services a un auer per fine; si le grantee sua un scire facias hors del meusme le fine pur ascun parcel de les services, et ad judgement de recover, cel judgement est bone attorement en ley pur tous les services.*

Also, if there bee lord and tenant, and the tenant holdeth of the lord by many kinde of services, and the lord grant the services to another by fine; if the grantee sue a scire facias out of the same fine for any parcell of the services, and hath judgment to recover, this judgment is a good attornment in law for all the services.

Here is to be observed, that this judgment in the scire facias (which is no more but that the demandant shall have execution, &c.) is a good attornment, albeit it is presumed that judicium redditor in invitum, and that an attornment in law of any part

†foreque un et added L. and M. and Roh.  &c. added in L. and M. and Roh.
part is good for the whole. And this is the fifth example that Littleton putteth of an attornment in law.

Note, that in case of a deede nothing passeth before attornment, as hath beene said. In the case of the fine, the thing granted passeth as to the state, but not to distrain, &c. without attornment. In the case of the king the thing granted doth passe both in estate and in privite to distrain, &c. without attornment, unless he be of lands or tenements that are parcell of the duchy of Lancaster, and lie out of the county palatine (1).

Sect. 565.

ITEM, si le seignior d'un rent service grantu les services a un auer, et le tendant attorne per un denier, et puis le grantee distrainne per le rent arere, et le tenant a luy fait rescous; en cee case le grantee a cera assise del rent, forse breffe de rescousour, pur cee que le done del denier per le tenant n'est fowne forse per voy d'attorney, &c. Mes si le tenant avoit done a le grantee le dit denier comme parcell de le rent, ou un maile ou un farthinge per voy de seisin del rent, donque cee est bene attornment, et auxy est bon seisin at grantee del rent; et donques sur lel rescous le grantee a cera assise, &c.

ALSO, if the lord of a rent service grant the services to another, and the tenant attorne by a penny, and after the grantee distrains for the rent behinde, and the tenant make rescous; in this case the grantee shall not have an assise for the rent, but a writ of rescous, because the giving of the penny by the tenant was not but by way of attornment, &c. But if the tenant had given to the grantee the said penny as parcell of the rent, or a half penny or a farthing by way of seisin of the rent, then (315. a) this is a good attornment, and also it is a good seisin to the grantee of the rent; and then upon such rescous the grantee shall have an assise, &c.

HEREUPON is to be observed a diversitie betweene meany given by way of attornment, and where it is given 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 beforehand is an actual seisin of the rent to have an assise. And so it is if he give 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 actual seisin and an attornment in law; and yet being given before the day in which the rent is due, it shall not be abated out of the rent. So as to give 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 diversitie is, for that remedies to come to rights or duties are ever taken favourably. Here also appeareth that there is an actual seisin, or a seisin in deed of a rent, whereof (as Littleton here speaketh)
speaketh) an assise doth lie; and a seisin in law which the grantee hath by attornment before actual possession (1).

Sect. 566.

ITEM, si sunt plusores jointenants que teignont per certane services, et le seignior granta a un auxer les services, et un de les jointenants attorna al grantee, cee est auswy bon, sio que tous † ussent attorne, pur cee que le seignior est entier, &c.

Also, if there be any jointenants which hold by certaine services, and the lord grant to another the services, and one of the jointenants attorne to the grantee, this is as good as if all had attorne, for that the seignior is entire, &c.

Here is to be observed what manner of tenants shall attorne to the grant. And first, if there be two or more jointenants, and one of them attorne, it is sufficient: for, as it hath beene often said, there cannot be an attornment in part. And albeit there is great authority against Littleton, yet the law hath beene adjudged according to Littleton’s opinion, as it hath beene in other of his cases when they have come in question: and as it is of an attornment, so it is of a seisin; a seisin of a rent by the hands of one jointenant is good for all, and a seisin of part of the rent is a good seisin of the whole.

If either the grantor or the grantee die, the attornment is countermanded; but if the tenant die, he that hath his estate may attorne at any time. If the tenant grant over his estate, his assignee may attorne.

If an infant hath lands by purchase or by descent, he shall be compelled to attorne in a per que servitia, and no mischice to the infant; for when he cometh to full age, he may disclaim to hold of him, or he may say that he holds by lesser services: but there should be a greater mischice for the lord if the attornment of an infant should not be good, for he should lose his services in the meantime.

If an infant be a lessee, he shall be compelled to attorne in a quid juris cimatis. The attornment of an infant to a grant by deed is good, and shall bind him, because it is a lawfull act, albeit he be not upon that grant by deed compellable to attorne. Of baron and fem Littleton puteth many cases in this chapter.

A man that is deafe and dumbe, and yet hath understanding, may attorne by signes: but one that is not compons suis cannot attorne, for he that hath no understanding cannot agree to the grant.

What conveyances shall be good without attornements more shall be said in this chapter in his proper place.

† ussent attorne—attornement, L. and M. and Roh.

(1) [See Note 274.]
ITEM, if home lessa tenements a terme d'ans, per force de quel lease * le lessee est seised, et puis le lessor per son fait grante la reversion a auter pur terme de vie, ou en taile, ou en fee; il coevint en tel case que le tenant a terme d'ans attorna, ou autemert rien passera a tiel granteur per tiel fait. Et si en cest case le tenant a terme d'ans attorna al grante, don-que maintenant passera le franktenement al granteur per tiel allurnement saus aucun livery de seisin, &c. pur ceo que si aucunc livery de seisin, † &c. sera ou besoigne d'este fait en cel case, donque le tenant a terme d'ans serroit al temps de livery de seisin ouste de son possession, † le quel ser- roit encounter reason, &c.

ALSO, if a man letteith tenements for terme of yeares, by force of which lease the lessee is seised, and after the lessor by his deed grant the reversion to another for terme of life, or in taile, or in fee; it behoveth 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 tenant for yeares attorne to the grantee, then the freehold shall presently passe to the grantee by such attornment without any livery of seisin, &c. because if any livery of seisin, &c. should be or were needfull to bee made, then the tenant for yeares should be at the time of the livery of seisin ousted of his possession, which should bee against reason, &c.

HERE Littleton having spoken of grantes of seignories and rent charges, and rents secke issuing out of land, here treateth of a grant of a reversion of land upon an estate for yeares; seeing this grant of the reversion must be by deed, and the agreement of the lessee for yeares requisite thereunto, the freehold and inheritance doe passe thereby, as well as by livery of seisin, if it were in possession: and the grant of the reversion by deed with the attornment of the lessee, doe countervaile in law a feoffment by livery, as to the passing of the freehold and inheritance.

"A terme d'ans." [*] And yet a tenant by statute merchant, or tenant by statute staple, or by elegit, must also attorne; for the grantee may have a venire facias ad computandum, or tender the money, &c. and discharge the land; and if the reversion be granted by fine, they shall be compelled to attorne in a quid juris clamet.

And so the executors that have the land until the debts bee paid must attorne upon the grant of the reversion, although they have not any certaine terme for yeares.

* le lessee not in L. and M. nor Roh. † le quel—que, L. and M. and Roh.
† &c. not in L. and M. nor Roh.
Sect. 568.

ITEM, si tenements soient lesses a un homme pur terme devie, ou done en le taile, savant le reversion, &c. si ceduy en le reversion en tiel case granta le reversion a un auter per son fait, il covient que le tenuant de la terre at-tournar al grantez en la vie le grantor, ou autement le grant est voyd.*

ALSO, if tenements be letten to a man for terme of life, or given in taile, saving the reversion, &c. if hee in the reversion in such case grant the reversion to another by his deed, it behooveth that the tenant of the land attorne to the grantee in the life of the grantor, or otherwise the grant is voyd.

HERE Littleton speaketh of a reversion expectant upon an estate for life, or a gift in taile.

"Il covient que le tenuant de la terre atorne al grantor, &c." Let us therefore speake first of tenant for life: and yet in some case albeit tenant for life hath granted over his estate, yet he shall attorne. [5] As if tenant in dower or by the curtesie grant over his or her estate, and the heire grant over the reversion, the tenant in dower or by the curtesie may attorne, because at the time of the grant made they were attendant to the heire in reversion, and the grantee cannot be tenant in dower, or tenant by the curtesie. And if the reversion be granted by fine, the fine must suppose that the tenant in dower or by the curtesie did hold the land, albeit they had formerly granted over their estate, and albeit the reversion doth passe by the fine; yet the quid juris clamat must be brought against him that was tenant at the time of the note levied. But yet after the reversion is granted over, the grantee shall not have any action of wast against the tenant in dower or by the curtesie, but the action of waste must be brought against their assignee, and not against themselve; for tenant by the curtesie or tenant in dower cannot hold of any but of the heire: and therefore in respect of the privitie, they shall attorne and be subject to an action of wast, as long as the reversion remaineth in the heire, albeit they have granted over their whole estate. And it is worthy of the observation, that if the grantee of the reversion doth bring an action of wast against the assignee of the tenant by the curtesie, [6] the pl. must rehearse the stat. which proveth that no prohibition of waste in that case lay at the common law, as it did if the heire had brought it against the tenant by the curtesie itselfe: and therefore some doe hold, that if the heire doe grant over the reversion, that the attornment of the assignee of the tenant by the curtesie, or of tenant in dower is sufficient, because they afterward must be attendant and subject to the action of waste.

If the reversion of lessee for life be granted, and lessee for life assigne over his estate, the lessee cannot attorne; but the attornment of the assignee is good, because (as Littleton here saith) it behooveth that the tenant of the land doe attorne, and after the assignement

* &c. added L. and M. and Rob.
assignement there is no tenure or attendance, &c. between the lessee and him in reversion.

If lessee for life assigneth over his estate upon condition, he having nothing in him but a condition shall not attorne; but the assignee may attorne, because he is tenant of the land.

**Sect. 569.**

*En* mesme le maner est, si terre soit † done en taile, ou lesse a un home pur terme de vie, le remainder a un auter † en fee, si celuy en le remainder voile granter cest remainder a un auter, &c. si le tenant de la terre attourn a la vie le grantor, donques la grant de tiel remainder est bon, ou autenter nemy.

*In* the same manner is it, if land be granted in tail, or let to a man for terme of life, the remainder to another in fee, if he in the remainder will grant this remainder to another, &c. if the tenant of the land attorne in the life of the grantor, then the grant of such a remainder is good, or otherwise not.

*LITTLETON* also speaketh here of an attornment by tenant in taile; and true it is that he may attorne; but where the reversion is granted by fine, he is not compellable to attorne, because he hath an estate of inheritance which may continue for ever. And so it is of a tenant in tail after possiblitie of issue extinct, he shall not be compelled to attorne for the inheritance which was once in him. [c] But if tenant in taile after possiblitie of issue extinct grant over his estate, his assignee shall be compelled to attorne, because he never had but a bare state for life.

But as to tenant in taile, note a diversitie betweene a quid juris clamat, and a quem reddistum reddit, or a per quae servitias; for against a tenant in taile no quid juris clamat lieth, as is aforesaid. But if a man make a gift in taile, the remainder in fee, and the seigniorie or rent charge issuing out of the land be granted by fine, the conuesse shall maintaine a per quae servitias, or a quem redditum, and compell him to attorne; for herein his estate of inheritance is no privilege 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.

(Sect. 570.)

*P.* 12 E. 4. *Et la est tenus per tout le court, que tenant en taile ne serra arct d’atturner, mes s’il atturna gratis, c’est assets bone.*

† *done en taile ou*, not in L. and M. nor Rol.

† *en fee—&c. L. and M.*

*P.* 12 Edw. 4. *It is there helden by the whole court that tenant in taile shall not be compelled to attorne, but if he will attorne gratis, it is good enough.*

*This paragraph not in L. and M. nor Rol.*

**THIS**
THIS is added to Littleton, and therefore though it be good law, and the book truly cited, yet I passe it over.

Sect. 571.

ITEM, si terre soit lease a un home per termc d'ans, il remainder a un auter per terme de vie, reserving al lessor un certaine rent per an, et livrerie de seisin sur cec est fait al tenant per terme d'ans; si cestuy en le reverscion en cest case grant a le reverscion a un auter, \[\textit{etc.}\] et le tenant que est en le remainder apres le terme d'ans \[\textit{etc.}\] soy attourna, cec est bone attournement, et celuy a que cest reverscion est grant, per force de tiel attournement distrenera le tenant a terme d'ans par le rent due apres tiel attournement, coment que le tenant a terme d'ans ne unques attournait a luy. Et la cause est, par cec que lou le reverscion est dependant sur l'estate del franktenement, sussist que le tenant del franktenement attourna sur tiel grant del reverscion, \[\textit{etc.}\]

"SUFFIST que le tenant del franktenement attornna." (1) Note, Littleton saith not here, that the tenant of the franktenement ought in this case to attorne, but that it sufficeth that he doth attorne. And I heard sir James Dier chiefe justice of the common pleas hold, that in this case if the tenant for yeares did attorne, it would vest the reverscion; for seeing the estate for yeares is able to support the estate for life, he shall binde him in the remainder by his attornment in respect of his estate and privitie.

Sect. 572.

ET est ascavoir, que lou un leas a terme d'ans ou a terme de vie, ou done en talle, est fait a ascun home, reserving a tiel lessor ou donor un certaine rent, \[\textit{etc.}\] si tiel lessor ou donor granita son reverscion a un auter, et le tenant del terre attourna, le rent passa al

\[\textit{etc.}\] not in L. and M. nor Roh.

AND it is to be understood, that where a lease for yeares or for life, or a gift in talle, is made to any man, reserving to such lessor or donor a certaine rent, \[\textit{etc.}\] if such lessor or donor grant his reverscion to another, and the tenant of the land attorne, the

\[\textit{pet. not in L. and M. nor Roh.}\]

(1) [See Note 275.]
al granttee, coment que en le fait del grant de reversion nul mention soit fait de le rent, pur cce que le rent est incident al reversion en tien case, et nemy est converso, &c. Car si home voile grantier le rent en tien case a un auter, reservant a luy le reversion del terre, coment que le tenant attorne a le granttee, cce serra forskue un rent secke, &c.

Of this Littleton hath spoken before in the chapter of Rents.

Sect. 573.

ALSO, if a man let land to another for his life, and after hee confirmes 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 given 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 attornment in law. But yet hee in the remaynder [317. b.] shall not have any action of waste, nor other benefit by such remaynder, unless he 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 peradventure will retaine the deed to him, to this intent, that he in the remaynder should not have any action of waste against him, for that hee cannot come to have the deed in his possession, it will be 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 over, &c. and

* Car not in L. and M. nor Roh.
† de le fait not in L. and M. nor Roh.
‡ reteigner—receiver, L. and M. and Roh.
§ et sure chose not in L. and M. nor Roh.

| et pur cce added L. and M. and Roh. |
part a celuy que avera le remainder. Et donde il per monstrance de le part del endenture poit aver action de wast envers le tenant a terme de vie, et toute autre avantage que celuy en le remainder poit aver en tel case, &c.

HERE Littleton putteth a case of a remainder whereunto an attornment is requisite. And this is the sixth example of an attornment in law.

"Remaynder a un auter, &c." Of this sufficient hath been said in the chapter of Confirmation, Sect. 525.

"Si non que il avoit le fait en poigne." And albeit he hath no remedy to come to the deed during the life of tenant for life, yet because he is privy in estate, he shall not maintaine an action of waste without shewing the deed; but when the remainder is once executed he shall not need to shew the deed.

"Il sera bonne et sure chose, &c." Hereby it appeareth how necessary it is to use learned advice in a man's conveyance, for thereby shall be prevented many questions, and not to follow the advice of him that is experimented only. For as in physicke, Nulnum medicamentum est idem omnibus, so in law one forme or president of conveyance will not fit all cases.

[Sect. 574.]

ITEM, si deux joyntenants sont, les queux lassent leur terre a un auter pur terme de vie, rendant a eux et a leur heires certaine rent per an; en cest case si un des joyntenants en le reversion releasa a l'auter joyntenant en mesme le reversion, cest releas est bone, et celuy a que le releas est fait avera solement le rent del tenant a terme de vie, et avera solement un breife de waste envers luy, coment que il ne unques attorneroit per force de tel releas, &c. Et la cause est, par le privite que un foits fuit perenter le tenant a terme de vie et eux en le reversion.

ALSO, if two joyntenants be, who let their land to another for terme of life, rendering to them and to their heires a certaine yearly rent; in this case if one of the joyntenants in the reversion release to the other joyntenant in the same reversion, this release is good, and he to whom the release is made shall have only the rent of the tenant for life, and shall only have a writ of waste against him, although hee never attorned by force of such release, &c. And the reason is, for the privitie which once was betweene the tenant for life and them in the reversion.

* &c. not in L. and M. nor Roh.
"DEUX jointenants." And so it is (as it is here to be understood) albeit there be three or more joynentenants, and one of them releaseeth to one of the other.

It is true, that there is a difference between 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 seffor; and in the other it worketh a degree, and hee to whom the release is made is in the fier by him; yet in neither of these cases there is requisite any attornment, for both of them are within Littleton's reason (for the privitie, &c.)

"Pur le privitie, &c." For if one joynentenant make a lease for yeares, reserving a rent, and dieth, the survivor shall not have the rent; and therefore Littleton here addeth materially, for the privitie that was betwene the tenant for life and them in the reversion.

And here it is good to be seen what grantors or others that make conveyances, &c. are such as their grants or conveyances are either good without attornment, or where the tenant is no way compellable to attorne. Tenant for life shall not be compelled to attorne in a quid juris clericum upon a grant of a reversion 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 than the fine levied, but because the court will not suffer a prejudic to the king, and the king may seize the reversion and rent, and so the tenant shall be attandant to another. Also it is a generall rule, that when the grant by fine is defeasible, there the tenant shall not be compelled to attorne.

As if an infant leve a fine, this is defeasible by writ of error during his minority, and therefore the tenant shall not be compelled to attorne.

So if the land be holden in ancient demesne, and he in the reversion leveth a fine of the reversion at the common law, the tenant shall not be compellable to attorne, because the estate that passed is reversible in a writ of deceit.

So if tenant in taille had levied a fine, the tenant should not be compelled to attorne, because it was defeasible by the issue in taille.

But now the statutes of 4 H. 7. and 32 H. 8. having given a further strength to fines to barre the issue in taille, the reason of the common law being taken away, the tenant in this case shall be compelled to attorne, as it was adjudged (**) in justice Windham's case.

If an alienation be in mortmaine, the tenant shall not be compelled to attorne, because the lord paramount may defect it.

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Sect. 575.

EN mesme le maner, et pur mesme la cause, est, lou home lessa terre a un auter pur terme de vie, le remainder a un auter pur terme de vie, reservant le reversion au lessour; en cest

* lessour—luy, L. and M. and Rob.
Of Attornment. Sect. 576.

c'est cas si celuy en le reversion relessa a celuy en le remainder et a ses heires tout son droit, &c. donques celuy en le remainder ad un fee, &c. et il uzera un brief de wast envers le tenant a terme de vie sans aucun attornement de luy, &c.

this case if hee in the reversion 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 have a writ of wast against the tenant for life without any attornement of him, &c.

This needeth no explication. Vide Sect. 549. 843. 456.

Sect. 576.

I TEM, si home lessa terres ou tenements a un auter pur terme des ans, et puis il ousta son termor, et ent enfeoffa un auter en fee, et puis le tenant a terme d'ans enter sur le feoffee, en claimant son terme, &c. et puis fait wast ; en cest cas le feoffee averca per la ley un briefe de wast envers luy, et uncertain il n'attornast pas † a luy. Et la cause est, come jeo suppose, par ce que celuy que ad droit de avcr terres ou tenements pur terme d'ans, ‡ ou auterment, ne serroir per la ley misconusant de les feoffements que furent faits de et sur mesmes les terres, &c. Et entant que per tiet feoffiment le tenant a terme d'ans fut † † mis hors de son possession, et per son entre il causast le reversion d’estre a celuy a que le feoffment fut fait, ceo est bone attornement ; car celuy a que le feoffment fut fait, avoit null reversion davant que le tenant a terme d'ans avoit enter sur luy, pur ceo que il fuit † en possession en son demesne come de fee, et per l'entrie del tenant a terme d'ans il y ad forseque un reversion, quel est per le fait le tenant a terme d'ans, scilicet, per son entrie, &c.

ALSO, if a man lett lands or tenements to another for termes of yeares, and after he oust his termor, and thereof enfeofo another in fee, and after the tenant for yeares enter upon the feoffee, claying his term, &c. and after doth waste ; in this case the feoffee shall have by law a writ of waste against him, and yet hee did not attorne unto him. And the cause is, as I suppose, for that he which hath right to have lands or tenements for yeares, or otherwise, should not by law bee misconusant of the feoffments which were made of and upon the same 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 reversion to bee to him to whom the feoffment was made, this is a good attornement ; for he to whom the feoffment was made, had no reversion before the tenant for years had entred upon him, for that he was in possession in his deemes as of fee, and by the entrie of the tenant for yeares, hee hath but a reversion, which is by the act of the tenant for yeares, scilicet, by his entrie, &c.

† a luy not in L. and M. nor Roh.
‡ ou auterment not in L. and M. nor Roh.
† mis hors de son possession, et per son entrie

il causit le reversion d'estre a celuy a que le feoffment fut, not in L. and M. nor Roh.

† en possession—scilicet, L. and M. and Roh.
MÊME la ley est, comme il semble, lour lees est fait per terme de vie, servant la reversion al leessor, si le leessor disaisit le leesse, et fait seoffment en fee, si le tenant a terme de vie enter et fait waste, le seoffee avert briefe de waste sans aucu autre attournement, cause qui supra, i.e.

THE same law is, as it seemeth, where a lease is made for life, saving the reversion to the lessor, if the lessor disseise the lessee, and make a seoffment in fee, if the tenant for life enter and make waste, the seoffee shall have a writ of waste without any other attournement, cause qui supra, i.e.

THERE have been now in all seven examples, that Littleton puttheth of an attournement in law, and here he puttheth 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 lessee shall not by law be misconusant the seoffments that were made of and upon the same land. And the reason of the attournement is, because the whole fee simple passeth by the seoffment, and the lessee by his regresse leaveth the reversion in the seoffee, which (saith Littleton) is a good attournement. 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 resolved [s] in Brasbritche's case, and after in the deane of Paul's case, 30 Edw. 2d Edw. 7th,

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 doe recover in an assise, this is no attournement, because hec comes 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 reversion is in the seoffee. [s] But others doe hold it all one in case of a recovery, and a regresse.

If the lessor disseise tenant for life, or ouste tenant for yeares, and maketh a seoffment in fee, by this the rent reserved upon the lease for life or yeares is not extinguished, but by the regresse of the lessee the rent is revived, because it is incident to the reversion: and so hath it beene adjudged. But if a man be seised of a rent in fee, and disseise the tenant of the land, and make a seoffment in fee, the tenant re-entrett, this rent is not revived. And so note a diversitie between a rent incident to a reversion, and a rent not incident to a reversion.

If two joynit lessees for yeares or for life be ousted or disseised by the lessor, and he eneoffe another, if one of the lessees re-enter, this is a good attournement, and shall bide both; for an attournement in law is as strong as an attournement in deed.

If a man make a lease for life, and then grant the reversion for life, and the lessee attorne, and after the lessor disseise the lessee for life, and make a seoffment in fee, and the lessee re-enter, this shall leave a reversion in the grantee for life, and another reversion in the seoffee, and yet this is no attournement in law of the grantee.

(1) [See Note 276.]
grantee for life, because he doth no act, nor assent to any which might amount to an attornment 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 misconisant of the feoffment made upon the land, and so out of the reason of Littleton. But yet the reversion in fee doth passe to the feoffe.

ITEM, si leas soit fait pur terme de vie, le remainder a un auctor en la taille, le remainder ouster a les droit heires le tenant a terme de vie; en est cas, si le tenant a terme de vie granta son remainder en fee a auctor per son fait, cel remainder maintenent passa per le fait sans aucun attornment, * &c. car si aucun doit attorne en est cas, cec servoit le tenant a terme de vie, et en vaine serroit que il attorne-roit sur son grant demesne, &c.

ALSO, if a lease be made for life, the remainder to another in taile, the remainder over to the right heires 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 maintenent passeth by the deede without any attornment, &c. for that if any ought to attorne in this case, it should be the tenant for life, and in vaine were that he should attorne upon his owne grant, &c.

HERE it appeareth, that where the ancestor taketh an estate of freehold, and after a remainder is limited to his right heires, that the fee simple vesteth in himself, as well as if it had beene limited to him and his heires; for his right heires are in these case words of limitation of estate, and not of purchase. Otherwise it is where the ancestor 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 ancestor and the heire are correlativa of inheritances, so are the testator and executor, or the intestate and administrator of chattells. And so it is if A. make a feoffment in fee to the use of B. for life, and after to the use of C. for life or in taile, and after to the use of the right heires of B., B. hath the fee simple in him as well when it is by way of limitation of use, as when it is by act executed (1).

"En vaine serroit, &c." Quadr vanum et inutile est lex non requirit. Lex est ratio summâ, qua jubes quâ sunt utilia et necessaria, et contraria prohibet; and arguments drawne from hence are forcible in law.

&c. not in L. and M. nor Boh.

(1) The observation of Mr. Douglas upon this point (note to page 506 of his Reports) deserves the reader’s most serious attention.
Sect. 579.

ITEM, if a tenant be seignior and tenant, and the tenant holdeth the seignior per certaine rent, and service of chivalry, if the seignior grant the services of his tenant per fine, the services are maintenent in the grantee by force of the fine; but yet the lord may not distreyne for any parcel of the services, without attornment: but if the tenant dieth, his heire within age, the lord shall have the wardship of the bodie of the heire, and of his lands, &c. albeit he never attorned, because that the seigniorie was in the grantee presently by force of the fine. And also in such case if the tenant die without heire, the lord shall have the tenancie by way of escheat.

HERE Littleton beginneth to shew what advantages the comusee of a fine may take before attornment, and what not.

[4] First, he cannot distreyne, because an avowrie is in lieu of an action; and thereupon privitie is requisite. So likewise, and for the same cause, he can have no action of waste, nor writ of entrie, ad communem legem, or in consimili caso, or in caso proviso, writ of customes and services, nor writ of ward, &c. (1)

But if a man make a lease for yeares, and grant the reversion by fine, if the lessee be ousted, and the comusee disceised, the comusee, without attornment, shall maintaine an assise; for this writ is maintained against a stranger, where there needeth no privitie. And such things as the lord may seise, or enter into without suing any action, there the comusee, before any attornment, may take benefit thereof; as to seise a ward or heriot; or to enter into the 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 disherson.

Sect. 580, 581, 582.

EN mesme le maner est, si home granta le reversion de son tenant a terme de vie a un auter per fine, le reversion passa maintenent al grantee per

(1) [See Note 277.]
Lib. 3. Of Attornement. Sect. 581, 582.

per force del fine, mes le grantee jarnnes n'acerra action de wast sans attornment, &c.

grantee by force of the fine, but the grantee shall never have an action of wast without attornment, &c.

Sect. 581.

Mes uncere si le tenant a terme de vie alienast en fee, le grantee poct enter, * &c. pur cee que le reversion fuit en buy per force del fine, et tiel alienation fuit a son diserittance.

But yet if the tenant for life alieneth in fee, the grantee may enter, &c. because the reversion was in him by force of the fine, and such alienation was to his diserittance.

Sect. 582.

Mes en † cee cas lou le seignior granta les services de son tenant per fine, si tenant devie (son heire estant de plein age) le grantee per le fine n'avera reliefe, ne unques distreynera pur reliefe, sinon que il † avoit l'attornment del tenant que morust: † car de tiel chose que gisant en distresse, sur que le breve de replevin est vue, &c. home doit et covient d'avouer le prisel bonne et droiturel, &c. et la covient estre attornment del tenant, coment que le grantu de tiel chose soit per fine: mes d'aver le gard de les terres ou tenements issint tenus durant le nonage le heire, ou de eux aver per voy d'escheat, la ne beseigne aucun distress, &c. mes un enrie en la terre per force de le droit del seigniory que le grantee ad per force del fine, &c. Sic vide diversitatem †.

But in this case where the lord granteth the services of his tenant by fine, if the tenant die (his heire being of ful age) the grantee by the fine shall not have reliefe, nor shal ever distreyne for reliefe, unless that he hath the attornment of the tenant that dieth: for of such a thing which lieth in distress, whereupon the writ of replevin is sued, &c. a man must and ought to avow the taking good and rightfull, &c. and there there ought to be an attornment of the tenant, although the grant of such a thing be by fine: but to have the wardship of the lands or tenements so Holden during the nonage of the heire, or to have them by way of escheat, there needs no distress, &c. but an entrie into the land by force of the right of the seigniorie, which the grantee hath by force of the fine, &c. Sic vide diversitatem, &c.

It is said in our books that if tenant for life have a privilege not to be impeachable of waste, or any other privilege, if he doth attorne without saving his privilege, that hee hath lost it; which is so to be understood, where he attorne in a quid juris clamat brought by the conuene of a fine, that if he claimeth not his privilege, but

* &c. not in L. and M. nor Roh.
† cee not in L. and M. nor Roh.
‡ avoit l'attornment—fusoit attornment, L. and M. and Roh.
§ &c. added L. and M. and Roh.
¶ &c. added L. and M. and Roh.
but attorne generally, his privilege is lost, for that the writ suppos-
eth him to be but a bare tenant for life; and by his general attorne-
ment, according to the writ, he is barred for ever to claim any
privilege but a bare estate for life. But if upon a grant of the rever-
sion by deed, the tenant for life doth attorne, he loseth no privilege;
for there can be no conclusion or barre by the attornment in pais;
and so it is of an attornment 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 prejudice him
of any privilege: so it is if the lessor levie a fine of the re-
version, and the conuse die without heire, whereby the re-
version esceasteeth, in this case the law doth supply an attornment,
and therefore the lessee shall lose no privilege. But in the quid
juris clamat, if the lessee shew his estate and his privilege, and is
ready, saving to him his privilege, &c. to attorne, hereby either
his privilege shall bee allowed and entred of record, or he shall not
be compelled to attorne: [6] and if the plaintiffs be within age, so
as hee cannot acknowledge the privilege, the tenant shall not be
compelled to attorne untill his full age, when he may acknowledge
it. But otherwise it is (as some hold) if a quid juris clamat be
brought by baron and feme, the privilege shall be entred into the
rolle, notwithstanding shee is a feme covert. And in a per que
servicia brought by the conusee of the mesne; the tenant may shew
that he held by homage anuestrell, and saving to him his war-
rantie and acquittall, he is readie to attorne. In the same manner,
if the tenant hath any other acquittall, and the mesne levie a fine to
one for life, the remainder to another in fee, the tenant for life
bringeth a per que servicia, and the tenant is ready to attorne, sav-
ing his acquittall, and the plaintiff acknowledged it, and thereupon
the tenant attorne, tenant for life dieth; in this case, albeit regularly
the attornment to the tenant for life is an attornment to him in the
remainder, yet in this case hee in the remainder shall not distreine,
till he hath acknowledged the acquittall, which must be in a per que
servicia, brought by him against the tenant.

"Alien en fee, &c." Of this sufficient hath beene said in the
next precedent Section.

"N’averia reliefe, &c." Of this sufficient hath beene said in the
next precedent Section.

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Some notes are included at the bottom of the page, indicating further discussion or notes on the previous section. These notes are not transcribed as they are not part of the main text. The page number is 583, and the next section is 584.
way of escheat; and if afterwards the services of the mesnealtie bee behind, in this case hee which was lord paramont may distraine the tenant, notwithstanding that the tenant did never 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 avow upon 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 shoold bee compelled to avow upon the grantee; and also in as much the lord paramont doth not claime the mesnaltie by force of the grant made by fine levied by the mesne, but by vertue of his seigniorie paramont, vis. by way of escheat, he shall avow upon the tenant for the services which the mesne had, &c. albeit that the tenant did never attorne.

HERE Littleton putteth the case where one that claimeth under a conuexys by fine may distraine or maintaine any action, albeit there was never any attornment made to the conuexus, or to him that hath his estate.

And here is a diversitie betweene an act in law that giveth one inheritance in lieu of another, and an act in law that conveyeth the estate of the conuexus only. Of the former Littleton here putteth an example of the escheat of the mesnaltie which drowneth the seigniorie paramont; and therefore reason would that the lord by this act in law should have as much benefit of the mesnaltie escheated, as he had of the seigniorie that is drowned; and the rather for that the law casteth it upon him, and hee hath no remedy to compell the tenant to attorne. Another reason hereof Littleton here yeeldeth, because the lord commeth to the mesnaltie by a seigniorie paramont, and therefore there needeth no attornment. [c] As if lessee for life be of a manor, and he surrender his estate to the lessor, there needeth no attornment of the tenant’s, because the lessor is in by a title paramount. But if the conuexus dieth, and the law casteth his seigniorie upon his heire by descent, he shall not be in any better estate than his ancestor was, because he claimeth as heire meereby by the conuexus.

So it is (as hath beene said) if the conuexus of a fine before attornment bargaineth and selleth the seigniorie by deed indented and enrolled, the bargainee shall not distraine, because the bargainor, from whom the seigniorie moveth, had never actuall possession.

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\[321. b.\] dist not in L. and M. nor Roh. 
Scilicet not in L. and M. nor Roh.
So and for the same reason if a reversion be granted by fine, and the consee before attornment disese the tenant for life and make a feoffment in fee, and the lessee re-enter, the feoffee shall not distraine.

Sect. 584.

In the same manner it is, where the reversion of a tenant for life is granted by fine to another in fee, and the grantee afterwards dieth without heir, now the lord hath the reversion by way of escheat; and if after the tenant maketh wast, the lord shall have a writ of waste against him, notwithstanding that he never attorne, caus'd quâ supra. But where a man claimeth by force of the grant made by the fine, scil. as heire, or as assignee, &c. there hee shall not distraire nor avowe, nor have an action of waste, &c. without attornment.

Here Littleton expresseth two diversities. First, betweene an act in law, and the grant of the party. This case is put of an [d] escheat, 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 party; as if the consee of a statute merchant extendeth a seigniorie or rent, hee shall distraine without any attornment. If a man make a lease for life or yeares, and after levie a fine to A. the use of B. and his heires, B. shall distraine and have an action of waste, albeit the consee never had any attornment, because the reversion is vested in him by force of the statute, and hath no remedy to compell the lessee to attorne.

And so it is of a bargainue and sale by deed indented and inrolled, but this is by force of a statute since Littleton wrote.

Secondly, where he that commeth in by act in law is in the per, as the heire of the consee, who setteth in his ancestor's seat, tanguam pars antecessoris de sanguine, and the lord by escheat, which is an estranger, and commeth in mecrely in the post.

† &c. added L. and M. and Roh.
‡ ne avowera not in L. and M. nor Roh. nor in MSS.
Lib. 3. Of Attornment. Sect. 585, 586.

Sect. 585.

**ITEM.** en ancient boroughs et cities, lou terres et tenements [322. a.]deins mesme les boroughs et cities sont devisable per testament per custome et use, &c. si en tiel§ borough ou citie home soi seisse de rent service, ou de rent charge, et devisa cel rent ou service a un auter per son testament et morust; en cest cas celuy a que tiel devise est fait, poit distreiner le tenant per le rent ou service aderere, coment que le tenant n’atonna pas.

**HERE** doth Littleton put a case where a man may have a seigniory, rent, reversion, or remainder meerely by the act of the party, and may distraine, and have any action without any attornment, and that is by devise of lands devisable by custome when Littleton wrote, by the last will and testament of the owner.

**Sect. 586.**

**Et** mesme le maner est, lou home lessu tiels tenements devisables a un auter pur terme de vie, ou pur terme d’ans, et devisa la recursion per son testament a un auter en fee, ou en fee taille, et morust, et puis le tenant fait wast, celuy a que le devise fuit fait acro briefe de wast, coment que le tenant ne unque attorna. Et la cause est, pur ceo que la volunt le deviser fuit per son testament serra performe solonque l’entent del deviser; et si l’effect de cee girrouit sur l’attournement del tenant, † donques per cause le tenant ne voye unque atturner, et donques le volunt del deviser ne seroit une performe, † &c. et pur cee le device distreiner, &c. ou acro action de wast, &c. sans attournement. Car si home devisa tiels tenements a un auter per son testament, habendum

§ cas added L. and M. and Boh.
† &c. added L. and M. and Boh.

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habendum sibi imperpetuum, et morust, et le device enter, il ad fee simple, caus'd quæ supra; * uncere [322, b.] si fact de feoffment ust este i; fait a ley por le devisor en sa vie de mesmo es tenements, habendum sibi imperpetuum, et livery de seisin sur ceo fuit fait, il n'aceroit estate forisque pur terme de sa vie.

attornment. For if a man deviseth such tenements to another by his testament, habendum sibi imperpetuum, and dieth, and the devisee enter, hee hath a fee simple, caus’d quæ supra; yet if a deed of feoffment had beene made to him by the devisor of the same tenements, habendum sibi imperpetuum, and livery of seisin were made upon this, hee should have an estate but for terme of his life.

BOTH this and the precedent case stand upon one and the same reason, which Littleton here yeeldeth, viz. because that the will of the devisor expressed by his testament shall be performed according to the intent of the devisor; and it shall not lie in the power of the tenant or lessee to frustrate the will of the devisor by denying his attornment. Here Littleton mentioneth a maxime of the common law, viz. quod ultima voluntas testatoris est perimplienda secundum veram intentionem eum: and, Respublica interest suprema hominum testamenta rata haberi.

"Testament," Testamentum, i.e. testatio mentis, which is made nullæ praesentis metu periculi, sed solis cogitatione mortalitatis. Omnem testamentum morte consummatum.

"Car si homc devisa tigla tenementa a un auer, &c." Here Littleton putteth a case where the intent of the testator shall be taken, viz. where a man by devise shall have a fee simple without these words (heires); and here Littleton putteth the diversitie between a will and a feoffment.

Now by the statutes of 32 and 34 H. 8. (as hath beene said in the chapter of Burgage) lands, tenements, and hereditaments are devisable, as by the said acts doe appear.

ITEM, si home seisie d'un mannor quel est parcell en demene et parcell en service, et est soit disceeise, mes les tenants que teignont del mannor ne unique attournant § a le disseisor; en cest cas, comcmt le disseisor morust seisie, et son heire soit cins per dissent, &c. encore poit le disseeise distreine purs le rent arcre, et aver les services, &c. Mes si les tenants viendraent al disseisor, et diise, Nous deveignous voultre

* et added L. and M. and Rob.
† 12 H. 7. 12.
\$ a 12—de 16, L. and M. and Rob.

ALSO, if a man be seised of a manor which is parcell in demesne and parcell in service, and is thereof disceised, but the tenants which hold of the manor doe never attorne to the disseisor; in this case, albeit the disseisor dieth seised, and his heire is in by dissent, &c. yet may the disseissee distreine for the rent behinde, and have the services, &c. But if the tenants come to the disseisor
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Votre tenents, &c. ou auter attournement a bury feoyent, &c. et puis le disessor morust seise, donte le disesseur ne poite distreine pur le rent, &c. pur eue que tout le manor descendist al heire le disessor, &c.

Lit. Lrta. N having spoken of estates gained by lawful conveyances, doth now speake of estates gained by wrong; and here putteth a case of a disessein of a manor, where it appeareth, that the disessor cannot disseise the lord of the rents or services without the attornment of the tenants to the disessor; for seeing an attornment is requisite to a feoffment and other lawful conveyances, a fortiori, a disessor or other wrong doer shall not gains them without attornment. The like law is of an abator and an intruder. But albeit the disessor hath once gotten the attornment of the tenants and payment of their rents, yet may they refuse afterwards for avoiding of their double charge. And here the attornment of the tenant of a manor to a disessor of the demesnes shall dispossese the lord of the rents and services parcell of the manor, because both demesnes, rents and services make but one entire manor, and the demesnes are the principal: but otherwise it is of rents and services in grosse, as in this next Section our author teacheth us.

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Mes si un tient de moy per rent service, le que ci est un service en grosse, et nicet per reason de mon manor, et un auter que nut droict ad, clama le rent, et receve et prent memse le rent de mon tenant per coheerion de distres, ou per auter forme, et disessoroi moy per tiel prendre de rent; coment que tiel disessor morust issint seise en pernante de rent, unicore apres sa mort jec puissay bien distreine le tenant pur le rent que suit aderere devant le decesse del disessor, et auxy apres son decease. Et la cause est, pur ceo que tiel disessor n'est pas mon disessor foroqae a ma election et ma volunt. Car coment que il prent le rent de disessor and say, We become your tenants, &c. or make to him some other attornment, &c. and after the disessor dieth seised, then the disesseur cannot distraine for the rent, &c. for that all the manor descendeth to the heire of the disessor, &c.

But if one holdeth of mee by rent service, which is a service in grosse, and not by reason of my manor, and another that hath no right, claimeth the rent, and receiveth and taketh the same rent of my tenant by coercion of distress, or by other forme, and disesseith mee by such taking of the rent; albeit such disessor dieth so seised in taking of the rent, yet after his death I may well distraine the tenant for the rent which was behinde before the decease of the disessor, and also after his decease. And the cause is, for that such disessor is not my disessor but at my election and will. For albeit he

* et nicet per reason de mon manor, not in L. and M. nor Roh.
† clama—claimant memoe, L. and M. and Roh.
‡ et receve—a receiver, L. and M. and Roh.
§ decea—distress, L. and M. and Roh.
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 Sect. 589.

he taketh the rent of my tenant, &c. yet I may at all times distraine my tenant for the rent behind, 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 unto me, &c.

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For the payment of my tenant 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 have an assise against such perner, yet this is at my election, 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 grant by my deed the service to another, and the tenant attorne, this is good enough, and the services by such grant and attornment are presently in the grante, &c. But otherwise it is where the rent is parcell of a manor, and the disseisor dieth seised of the whole manor, as in the case next before is sayd, &c.

HERE Littleton puttheth a diversside betweene a rent service parcel of a manor, whereof he had spoken before, and a rent service in grosse. For a man cannot be disseised of a rent service in grosse, rent charge, or rent secke, by attornment or payment of the rent to a stranger, but at his election; for the rule of law is, Nemor. reddit ulterius invito domino percipere aut possidere posses; and our author hath before taught us what be disseisins of rents services, rents charges, and rents secks, and payment to a stranger is none of them, but at the lord’s election, as our author here saith.

"Pernor," i.e. the taker of my rent. But if the disseisee bring an assise against such a perner, then he doth admit himselfe out of possession.

"Discente."

§ &c. added L. and M. and Roh.

\( \text{§. et—ou sans, L. and M. and Roh.} \)
Of Attornment.

"Discette." A discent of a rent in grosse bindeth not the right owner but that he may distrayne, albeit he admitted himselfe out of possession, and determined his election, as by bringing of an assise, &c.

If the tenant of the land paye the rent to a stranger which hath no right thereunto, and the right owner release to him, this release is good, because he thereby admitted himselfe to be out of possession. But if the tenant had given him any thing in name of attornment, and the right owner had released to him, this release had beene void, because an attornment only can be no disceisim of the rent.

"Jeo grant fier mon fuit, &c." This also proveth, that the right owner is not out of possession, and that this grant over is a demonstration of his election that hee is in possession.

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ALSO, if I be seised of a manor, parcelle in demese, and parcelle in service, and I give certaine acres of the land, parcelle of the desmesne of the same manor, to another in taile, yeelind to mee and to my heires a certaine rent, &c. if in this case I be disceised of the manor, and all the tenaunts arteorne and paye their rents to the disceisor, and also the sayd tenant in taile paye the rent by me reserved, to the disceisor, and after the disceisor dieth seised, &c. and his heire enter, and is in by discent, yet in this case I may well distrayne the tenant in taile, and his heires, for the rent by me reserved upon the gift, scillicet, as well for the rent being behinde before the discent to the heire of the disceisor, as also for the rent which happeth to be behind after the same discent, notwithstanding such dying seised of the disceisor, &c. And the reason is, for that when a man giveth lands in taile, saving the reversions to himselfe, and hee upon the sayd gift reserveth to himselfe a rent or other services, all the rent and services are incident to the reversion; and when a man

* &c. not in L. and M. nor Rob.

† a un auter added in L. and M. and Rob.
d'un estrange home, sinon que le tenant soit ousted de son estate et possession, &c. Car si longement que le tenant en la taille et ses heires continuent leur possession per force de mon done, cy longement est le reversion en moy et en mes heires : et tant que le rent et les services reserves sur tiel done sont incidents et dependants al reversion, que cunque que ad le reversion, avera mesme le rent et services, &c.

Sect. 591.

IN the same manner is it, where I let parcell of the demesnes of the manor to another for termes of life, or for termes of yeares, rendrind to mee a certaine rent, &c. albeit I be disseised of the manor, &c. and the disseisor die seised, &c. and his heire bee in by descent, yet I may distreine for the rent arete ut supra, notwithstanding such descent; for when a man hath made such a gift in taille, or such a lease for life, or for yeares, of parcell of the demesnes of a manor, &c. saving the reversion to such donor or lessor, &c. and after he is disseised of the manor, &c. such reversion after such disseisin is severed from the manor in deed, though it be not severed in right. And so thou mayst see (my sonne) a diversitie, where there is a manor parcell in demesne and parcell in services, which services are parcell of the same manor not incident to any reversion, &c. and where they are incident to the reversion, &c.

HERE Littleton puttheth a diversitie betweene rents and services parcell of a manor (whereof he had spoken before) and rents and services incident to a reversion parcell of a manor.

And

* et cee cas added L. and M. and Roh.
† &c. not in L. and M.
‡ estcent not in L. and M. nor Roh.
§ &c. added L. and M. and Roh.
And the reason of this diversitie is, for that as long as the donee in taile, lessee for life, or lessee for yeares, are in possession, they preserve the reversion in the donor or lessor; and so long as the reversion continue in the donor or lessor, so long do the rents and services which are incident to the reversion belong to the donor or lessor. Neither can the donor or lessor be put out of his reversion, unless the donee or lessee be put out of their possession; and if the donee or lessee be put out of their possession, then consequently is the donor or lessor put out of their reversion. But if the donee or lessee make a regresse, and regaine their estate and possession, thereby doe they ipso facto revest the reversion in the donor or lessor.

And here is to be observed, that when a man is seised of a manor, and maketh a gift in taile, or lease for life, &c. of parcell of the demesne of the manor, \[a\] the reversion is part of the manor, and by the grant of the manor the reversion shall passe with the attornement of the donee or lessee. But if the lord make a gift in taile, or a lease for life of the whole manor, excepting Blacke-Acre, parcell of the demesnies of the manor, and after he granteth away his manor; Blacke-Acre shall not passe; because during the estate taile, or lease for life, it is severed from the manor. And so note a diversitie, that a reversion of part may be parcell of a manor in possession, but a part in possession cannot be parcell of the reversion of a manor expectant upon any estate of freehold. But if a man make a lease for yeares of a manor, excepting Blacke Acree, and after granteth away the manor, Blacke Acree shall passe, because the freehold being entire, it remaineth parcell of the manor, and one pracie of the whole manor 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 pracie, because the freehold is severall.
DISCONTINUANCE is an ancient word in the law, and hath divers significations, &c. But as to one intent it hath this significati on, viz. where a man hath alienated to another certain lands or tenements and dieth, and another hath right to have the same lands or tenements, but hee may not enter into them because of such an alienation, &c.

"DISCONTINUANCE" is a word compounded of de and continuo, for continuare is to continue without intermission. Now by addition of de (symbolum gratiae die to it) which is a privative, it signifies an intermission. Discontinuare nihil alium signifi cat quam intermittere, desercere, interruphere. And so our author saith, [a] it is a very ancient word in law (1).

A discontinuance of estates in lands or tenements is properly (in legall understanding) an alienation made or suffered by tenant in title, or by any that is seized in auter droit, whereby the issue in title, or the heire or successor, or those in reversion or remainder, are driven to their action, and cannot enter.

All which is implied by the description of our author, and by the of Sectione 470. he useth discontinuance for a devesting or displacing of a reversion, though the entrie be not taken away.

I have added (properly) by good warrant of our author himselfe, for Sectione 470. he useth discontinuance for a devesting or displacing of a reversion, though the entrie be not taken away.

This discontinuance consisteth in doing or sufferin an act to be done, as hereafter shall appear. And where our author saith, that it hath divers significations, there is also a discontinuance of process 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.

There is another erroneous proceeding, and that consisteth in misdoing; as when one processe is awarded instead of another, or when a day is given which is not legall, this is called a miscon tinuance, and if the tenant or defendant make default, it is error; but if he appeare, then the miscon tinuance is salved, otherwise it is of a discontinuance. But let us returne to the discontinuance of estates in lands, whereof Littleton doth treat in this Chapter.

"Significations."  Here (as in many other places) it appeareth how necessary it is to know the signification of words.

And in this Chapter it appeareth, that when Littleton wrote, the estate in lands and tenements might have beene discontinued five manner of ways, viz. by feoffment, by fine, by release with warrantie,

(1) [See Note 278.]
rantic, confirmation with warranty, and by suffering of a recovery
in a præcie quæd reddat. And this was to the prejudice
of five kinds of persons, viz. of wives, of heires, of succes-
sors, of those in reversion, and of those in remainder. But for wives,
and their heires, and for successors, the law is altered by acts of par-
liament since Littleton wrote, as in this Chapter in their proper
places shall appeare.

Sect. 593.

SICOME un abbe seised de cer-
taine terres ou tenements en fee,
& alienast meemes les terres ou ten-
ements a un auter, en fee, ou en fee,
taille, ou par termé de vie, et * puis
l'abbe morust, son successor ne poit
en tres enter les dits terres ou tenements,
conseve que il ad droit eux aver conve
en droit de son meason, mes il est mis
a son action de recovere meemes les
terres ou tenements, quel est appelle,
breve de ingressu sine assensu capi-
tuli, &c.†

HERE Littleton puttheth an example of a discontinuance made
by one seised in outer droit, as by an abbot who had a fee
simple in the right of his monastery, and therefore his alienation
without the assent of his covent had beene a discontinuance at the
common law, and had driven his successor to a writ de ingressu sine
assensu capituli.

"De ingressu sine assensu capituli, &c." It is called so because
the alienation was sine assensu capituli; for if it had beene cum
assensu capituli, it should have beene a barre to the successor. And
because the successor could not enter, the common law gave him this
writ, and is so called of these words contained in the writ, which writ
you may read in the Register, and Fitzherbert's N. B.

And here is to be noted, that in law the covent, albei they be
regular and dead persons in law, yet are they said in law to be capi-
tulum to the abbot, as well as the deane and chapter, that be secular
to the bishop. But it is to be observed and implied in this (Vc.)
that, a sole body politicke that hath the absolute right in them, as an
abbey, bishop, and the like, may make a discontinuance; but a corpo-
ration agregate of many, as deane and chapter, warden and chaplaines,
master and fellowes, maior and commingallite, &c. cannot
make any discontinuance; for if they joyne, the grant is good; and
if the deane, warden, master, or maior make it alone where the
body is agregate of many, it is void, and worketh a disseisin. But
now

* pus not in L. and M. nor Rob.† &c. not in L. and M. nor Rob.
now (as hath been said) by the statute of 27 H. 8. and 31 H. 8. all
the abbots, priors, and other religious persons are so dissolved, as
there be none remaining this day, and by the statutes of 1 Eliz. and
13 Eliz. cap. 10. and 1 Jac. cap. 5. bishops and all other ecclesiastic-
call persons are disabled to alien or discontinue any of their eccle-
siasticall livings, as by the same acts doth appeare (1).

Sect. 594.

ITEM, si home seies de terre come 
en droit de sa feme, &c. et en 
enfoffia un auter, &c. et morust, la
feme ne puet enter, mes est mis a son
action, lequel est appel, cui in vita
&c.

ALSO, if a man be seised of land
as in right of his wife, &c. and
dieth, the wife may not enter, but
is put to her action, the which is
called, cui in vita, &c.

"E. N' droit sa femme, &c." (2) That is to say, in fee simple, fee-
tail, or for life. Here Littleton puttheth another case [326. a.]
where a man is seised in auter droit, and may make a dis-
continuance, as the husband seised in the right of his wife, and there-
fore the common law gave her a cui in vitid, and her heire a sur cui
in viitd, because they could not enter. But this is altered since our
author wrote, 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 or tenements of the wife, notwithstanding the
alienation of her husband.

And here is one of the alienations to make a discontinuance, viz.
a feoffment; and where our author speaketh of a husband seised in
the right of his wife, so it is where the husband and wife are joyntly
seised to them and their heires of an estate made during the cover-
ture, and the husband make a feoffment in fee, and dieth, the wife
now may enter within that statute, although it was the inheritance
of them both. And so it is if the feoffment be made by the husband
and wife, (albeit the words of the statute be by the husband only) for
in substance this is the act of the husband only (1).

If the husband cause a praecepte quod reddat upon a faint title to be
brought against him and his wife, and suffereth a recovery without
any voucher, and execution to be had against him and his wife, yet
this is holpen by the statute; for this by like construction is the act
of the husband, and the words of the statute be, made, suffered, or
done.

If the husband make a feoffment in fee of the lands which he
holdeth in the right of his wife, and after they are divorced causa
precontractis, yet the woman may enter within the purview of that
statute, and is not driven to her writ of cui ante divortium, as she
was

- &c. not in L. and M. nor Roh.

(1) [See Note 279.]

(2) [See Note 280.]

[326. a.]

(1) But a fine levied both by husband and

wife of her lands is not within the statute; and

it operates as a bar to her and her heirs of all
her estate and interest in the land. See 2 Rep.
57. 5. 77. b.
was at the common law, albeit the entry be by the statute given to
the wife, and now upon the matter she was never his lawfull wife.
But it sufficeth that she was his wife de facto at the time of the alie-
nation, and where her husband dieth she cannot be his wife at the
time of the entry.

If the husband levie a fine with proclamations, and dieth, the wife
must enter or avoid the estate of the comuse within five yeares, or
else she is barred for ever by the statute of 4 H. 7. for 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 proclamations.

If lands be given to the husband and wife, and to the heires of
their two bodies, and the husband maketh a feeoffment in fee and
dieth, the wife is holpen by the said statute, as hath bee said, and
so is the issue of both their bodies. Feme tenant in tailie taketh hus-
band, the husband maketh a feeoffment in fee, the wife before entrie
dieth without issue, he in the reversion or remainder may enter. For,
first, the reversion or remainder cannot be discontinued in this case,
because the estate taile is not discontinued. Secondly, the words of
the statute be, shall not be prejudicall or hurisfull to the wife or her
heires, or such as shall have 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 manors, lands, &c. according to their
rights and titles therein: by which words the entry of him in the
reversion or remainder in that case is preserved. The husband is
tenant in tailie, the remainder to the wife in tailie, the husband make
a feeoffment in fee; by this the husband by the common law did not
only discontinue his owne estate taile, but his wife’s remainder: 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 feeoffment in fee of his wife’s land, and the wife dieth, the
heire of the wife shall not enter during the husband’s life, neither
by the common law nor by the statute. 2

“Cui in vido, &c.” Here is also implied a sur cui in vido also
for the heire. This writ here mentioned in our author is so called of
those words contained in the writ, which you may read in the Re-
gister and Fitzherbert’s N. B.

[326. b.]

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ITEM, si tenant en taile de cer-
taine terre ent en fecoffia un auter,
&c. et ad issue et mortuus, son issue
ne pot pas enter en la terre, coment
que il ad title et droit a ceo, mes est
mis a son action, que est appel for-
medon en le discender, &c.

ALSO, if tenant in tailie of cer-
taine land thereof enfeoffe an-
other, &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 call-
ed a formedon in the discender, &c. (1)

“ENFEOFFA

(1) [See Note 381.]
"ENFEOFFA un auter, &c." Here is implied, 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 formeden in the discender, which is given
to the issue in taile by the statute of 13 E. 1. cap. 1. because he cannot enter.

"Tenant en taile." This extendeth as well 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 joynly with her husband, or only to her selfe, or
to her use in any lands or hereditaments of the inheritance or pur-
chase of her husband, or given to the husband and wife in taile by
any of the ancestors of the husband, or by any other person seised
to the use of the husband or his ancestors, and shall hereafter being
sole, or with any other after taken husband discontinue, &c. the
same; every such discontinuance shall be void; and that it shall be
lawfull for everyone to whom the interest, title, or inheritance,
after the decease of the said woman should appertain, 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 warrantye, yet this
doeth not take away the entry after her death, either of the issue or
of him in reversion or remainder. This statute hath bene exceed-
ently expounded by divers resolutions and judgments [e] which I
have quoted in the margent, and are worthy of due observation.

If lands were entailed to a man and to his wife, and to the heires
of their two bodies, 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
bodies, and not as heire to any one of them, and his entrie must en-
sue his title or action.

"De formeden." De forma donationis, so called because the
writ doth comprehend the forme of the gift. And there be three-
kinde of writs of formeden, viz. The first in the discender to be
brought by the issue in taile, which claime by descent per formam
donis. The second is in the reverter, which lieth to him in the
reversion or his heires or assigns after the state taile be spent. The
third is the remainder, which the law giveth to him in the remain-
der, his heires or assigns, after the determination of the estate taile;
of all which you may read in the Register and F. N. B.

Here Littleton sheweth that the issue in taile shall have a form-
eden in the discender. What other actions tenant in taile may have,
and not have, is good to be serene.

[a] Tenent in taile shall have a quodd permittat.
[b] Tenent in taile shall have a writy of customes and services in
de debet et soler, but shall not have it in the debet only.
[c] In like manner he shall have a secta ad molendinum in de de-
bet et soler, but not in the debet tantum.
[d] Tenent in taile shall have a writy of entre in consimili caus
and an admesurement, and a nativo habendo, cessavit, cecusat, waste,
and the like.
[e] But tenant in taile shall not have a writy of right sure diisclamer,
nor a quod jure, nor a ne injusite vexes, nor a nuper obit, or ratiocinable
parte,
Of Discontinuance.

Lib. 3.

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parc, nor a mordancester, nor a sur cui in vitâ ; for these and the like, none but tenant in fee shall have: and the highest writ that a tenant in taile can have is a formedon.

[327. a.]

Sect. 596.

ITEM, si soit tenant en le taile, the reversion being to the donor and his heires, if the tenant make a feoffment, &c. and die without issue, hee in the reversion cannot enter, but is put to his action of formedon in le reverter (4).

Sect. 597.

IN the same manner is it, where tenant in taile is seised of certaine land whereas of 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. (2) and for that that by force of such feoffments and alienations in the cases aforesaid, and the like cases, they that have title and right after the death of such a feoffor or alienor may not enter, but are put to their actions, ut supra; and for this cause such feoffments and alienations are called discontinuances.

"Feoffment, &c." Here is implied 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 fail, they in the reversion and remainder are driven to their formedon in reversion or remainder; and this remaineth as it was when Littleton wrote, not altered by any statute. And the reason whereof these alienations in the severall cases in this and the next Section doe make a discontinuance,

(1) [See Note 283.]

(2) [See Note 283.]
timance, and put him in the reversion or remainder that right had to his action, and took away his entry, was, for that he was privy in estate, and for the benefit of the purchaser, and for the safeguard of his warrantie, so as every man's right might be preserved, vis. to the demandant for his ancient right, and to the foecesc for the benefit of his warrantie, which was founded upon great reason and equity; which benefit of the warrantie should be prevented and avoided if the entrie of him that right had were lawfull, and thereby also the danger that many times happeneth by taking of possessions was warily prevented by law. But then it may be demanded, seeing that there was no reversion or remainder expectant upon any estate taille at the common law, nor the issue in taille had any remedy by the common law, if the tenant in taille had aliened, then by what law is the alienation of tenant in taille a discontinuance at this day to the issue in taille, or to him in reversion or remainder? Whereunto it is thus answered, that it is provided by the statute of W. 2. ca. 1. De doris conditionalisbus, quid non habent ille quisquis tenementum aie fuerit datum postestatem alienandi, &c. Upon these words the sages of the law have construed the said Act according to the rule and reason of the common law, and that in divers and sundry variable manners. For some alienations of tenant in taille, they have adjudged voydable by the issue in taille by action only: some at the election of the issue in taille to avoid it by action, entry, or claim: some are meerely void by the death of the tenant in taille: which severall constructions were made upon the selfsame words aforesaid.

As for example, If tenant in taille make a feoffement in fee, this drives the issue in taille 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 drive the successor and the wife to their action, and foreclosed them of their entrée: and as the entrée of the issue was taken away, so consequently of them in reversion 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 grant, had aliened, it was in the election of the successor or wife after the death of her husband to claim 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 tenant in taille. Lastly, if the abbot, bishop, or husband, had granted a rent newly created out of the land, &c. to another in fee, this had utterly ceased by their death; and so it is also by construction in case of tenant in taille. So as these words (non habent postestatem alienandi) doe worke these effects, vis. as to lands, that a feoffment barreth not the issue, &c. of his action, but worketh a discontinuance to barre him of his entrée: as to rents or any thing in esse, that lie in grant, that the said 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 diversiteit betweene an alienation working a discontinuance of an estate which taketh away an entrée, and an alienation working, divesting or displacing of estates which taketh away no entry. As if there be tenant for life, the remainder to A. in taille, the remainder to B. in fee, if tenant for life doth alien in fee, this
Of Discontinuance.

this doth divest and displace the remainders, but worketh no discontinuance. And therein it is to be observed, that to everie discontinuance there is necessary a divesting, or displacing of the estate, and turning the same to a right: for if it be not turned to a right, they that have the estate cannot be driven to an action. And that is the reason that such inheritances as lie in grant, cannot by grant be discontinued, because such a grant divesteth no estate, but passeth onely that which he may lawfully grant; and so the estate itselfe doth descend, reverter, or remaine, as shall be said hereafter in this Chapter.

A. maketh a gift in taile to B. who maketh a gift in taile to C. C. maketh a feoffment in fee and dieth without issue, B. hath issue and dieth, the issue of B. shall enter; for albeit the feoffment of C. did discontinue the reversion of the fee simple which B. hath gained upon the estate taile made to C. yet could it not discontinue the right of intaille 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 liverie, 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 only of the wife and her heires by the common law, and not of any other which claimed by title paramount above the discontinuance. As if lands had beene given to the husband and wife, and to a third person, and to their heires, and the husband had made a feoffment 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 survivor should have entred into the whole, for hee claimed not under the discontinuance, but by title paramount from the first feoffor; and seeing the right by law doth survive, the law doth give him a remedie to take advantage thereof by entry, for other remedie for that moitie he could not have.

"Fee, ou fee taile." And so it is of an estate for life.

ITEM, si tenant en taile soit disseisie, et il releasa per son fait [328. a.] a le disseisor et a ses heires tout le droit lequel il ad en meme les tenements, ceo n'est pas discontinuance, pur eoe que rien de droit passa al disseisor forsoque pur terme de vie del tenant en le taile que fist le release, &c.

ALSO, if tenant in taile be disseised, and he release by his 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 seoffment del tenant en le taile, fee simple passa per mesmo le seoffment per force de liverye de seisin, &c.

BUT by the seoffment of tenant in taile, fee simple passeth by the same seoffment by force of the liverye of seisin, &c.

Sect. 600.

MES per force d’un release rien passera forisque le droit que il post loyally et droitually releesser, sans leyde ou damage as auters persons queux ent averont droit apres son decease, &c. Issist il est grand diversitie percenter un seoffment d’un tenant en le taile, et un release fait per tenant en le taile.

BUT 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 have right therein after his decease, &c. So there is great diversitie between the seoffment of tenant in taile, and a release made by tenant in taile.

OUR author having put examples of estates passing by transmutation of an estate and possession, doth in this and the two Sections following put a diversitie betwene a seoffment 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 only 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 seoffment in respect of the liverye of seisin, for that it is the most solemn and common assurance in the country, and to be maintained for the common quiet of the realme: and by the seoffment the freehold (which is so much esteemed in law) doth passe by open liverye to the seoffee, and by the release a bare right.

Sect. 601.

MES il es dit, que si le tenant en taile en cest cas releesa a son disseiseor, et oblige luy et ses heires a garrantie, * et morust, et cest garnanty descendit a son issue, † cee est discontinuance per cause de le garnanty.

BUT it is said, that if the tenant in taile in this case release to his disseiseor, and bind him and his heirs to warrantie, and dieth, and this warrantie descend to his issue, this is a discontinuance by reason of the warrantie.

* &c. added L. and M. and Roh.
† donec added L. and M. and Roh.
Of Discontinuance.

Sect. 602, 603.

The reason why the addition of the warranty in this case makes a discontinuance, is that which hath been said, viz. If the issue in tail should enter, the warranty (which is so much favoured in law) should be destroyed: and therefore to the end that if assets in fee simple doe descend, he to whom the release is made, may plead the same, and barre the demandant: by which means all rights and advantages are saved. And that I may note it once for all, an (it est dit) with Littleton is as good as a concessum in a booke case.

Sect. 602.

Mes si un home ad issue fits per sa feme, et sa feme morust, et puis il prent auter feme, et tenements sont dones a tuy et a sa second feme, et a les heires de lour deux corps engendres, et ils ont issue un auter fits, et le second feme morust, et puis le tenant en le taile est disseisie, et il releasa al disseisor tout son droit, &c. et oblige tuy et ses heires a le garrante, &c. et devia, cee n'est pas discontinuance al issue en le taile per le second feme, mes il poit bien entier § pur cee que le garrante discendist a son eigne frere que son pier avoit per le primer feme, &c.

Sect. 603.

But if a man hath issue a sonne by his wife, and his wife dieth, and after hee taketh another wife, and tenements are given to him and to his second wife, and to the heires of their two bodies engendred, and they have 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 well enter, for that the warranty descendeth to his elder brother which his father had by the first wife, &c.

In the same manner is it, where lands are descendible to the youngest sonne after the custome of Burrough-English, which are entayed, &c. and the tennant in taile hath two sonnes, and is disseised, and he releaseth to his disseisor all his right with warranty, &c. and dieth, the younger sonne may enter upon the disseisor, notwithstanding the warranty, for that the warranty descendeth to the elder son: for alwayses the warranty shall descend to him who is heire by the common law.

$ &c. added L. and M. and Roh.

1 &c. not in L. and M. nor Roh.
By these two examples in this and the Section next following, it appeareth that a warrantie being added to a release or confirmation, and descending upon him that right hath to the land, maketh a discontinuance; otherwise it is out of the reason of the law, and worketh no discontinuance, if the warrantie descendeth upon another.

"Oue garrantie, &c." Here is implied that he doth binde him and his heirs to warrant to the releasee and his heirs.

"Toutes foites le garrantie descendist 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, Sectione 718, 735, 736, 737. so as it is not the warrantie only that maketh a discontinuance, but the warrantie and the descent upon him that right hath together.

Sect. 604.

ITEM, si un abbe soit disseisie, et il releessa a le disseisor ovesque garrantie, ceo n'est pas discontinuance a son successor, pur ceo que rien passa per cel releas forisque le droit que il ad durant le temps que il est abbe, et le garrantie est expire per son privation, ou per sa mort.

(4 Rep. 72.)

ALSO, if an abbot be 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 privation, or by his death.

THE reason hereof yeelded by Littleton is, for that the warrantie is expired by his privation or death.

"Per son privation, ou per sa mort." Note, that privation is here resembled to death, and so is translation also. Wherein this diversite is worthy of observation, that when a bishop, &c. make an estate, lease, grant of a rent-charge, warranty, or any other act which may tend to the diminution of the revenues of the bishopricke, &c. which should maintaine the successor, there the privation or translation of the bishop, &c. is all one with his death. But where the bishop is patron and ordinary, and confirmeth a lease made by the parson without the deane and chapter, and after the parson dieth, and the bishop collateth another, and then is translated, yet his confirmation remaineth good; for the revenues that are to maintaine the successor are not thereby diminished. And the like diversitie doth hold in case of resignation, notwithstanding [m] the authority to the contrary.

Sect.
Of Discontinuance.

Sect. 605.

ITEM, si home seisie en droit sa feme est disseisie, et il releasa, &c. one garrantie, ceo n'est pas discontinuance a la feme, si et surrequist 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 surviveth her husband, but that she may enter, &c. Causa patet.

THIS is evident, unless the wife be heire to the husband (as by law she may be), and then it is a discontinuance for the cause aforesaid.

[329. b.]

Sect. 606.

ITEM, si tenant en taile de certainerterrelessa mesme la terre a un auter pur terme des ans, per force de quel le lessee en est possession, en quel possession le tenant en taile per son fait relessa tout le droit que il avoit en mesme le terre, a aver et tener a le lessee et a ses heires a toutsjours; ceo n'est pas discontinuance, mes apres le decease le tenant en taile, son issue poit bien enter, pur ceo que per tiel relese rien passa forisque pur terme de * la vie de le tenant en le taile.

"CAR per tiel relese rien passa." Here is one of the maximes of the common law rehearsed by our author, whereof he doth put divers examples hereafter.

Sect. 607.

EN mesme le manner est, si le tenant en le taile confirma l’estate le lessee pur terme des ans, a aver et tener a luy et a ses heires, ceo n’est pas discontinuance, pur ceo que rien passa per tiel confirmation forisque l’estate que le tenant en le taile avoit pur terme de sa vie, &c.

IN the same manner it is, if the tenant in tayle confirm the estate of the lessee for yeares, to have 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 terme of his life, &c.

* i.e.—son, L. and M. and Bob. RIENS

("RIENS 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.

Sect. 608.

ITEM, si tenant en taile after such tiel leas granta le recursion en fee per son fait a auter, et voile que apres le termo fine, que mesmo le terre remaindroit a le grantez et a ses heires a touts jours, et le tenant a terme d’ans atturna, ceo n’est pas discontinuance. Car tiels choses queux passoent in tiels cases de tenant in le taile tautosomelemant per voy de grault, ou per confirmation, ou per tiel release, rien poit passer pur faire estate a celtu a que tiel grault, ou confirmation, ou release, est fait, forsoique ceo que le tenant en taile poit droiterement faire, * et ceo n’est forsoque pur terme de sa vie, &c.

Sect. 609.

ALSO, if tenant in taile after such lease grant the reversion in fee by his deed to another, [330. a.] and willeth that after the terme ended, that the same land shall remaine to the grante and his heirs for ever, 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.

CAR si jeo lessa terre a un home pur terme de sa vie, &c. et le tenant a terme de vie lesse mesme la terre a un auter pur terme des ans, &c. et puis mon tenant a terme de vie grauntz la recursion a un auter en fee, et le tenant a terme des ans atturna, en cest case le grantez n’ad en le franktenement forsoque ; estate pur terme de vie son graunter, &c. et jeo que suis in le recursion de fee simple, ne puisse eenter per force de cel grant del recursion fait per mon tenant a terme de vie, pur ceo que per tiel grant mon recursion n’est pas discontinuue, mes tout temps denurt a moy, sicome il fuit adecrant, nient obstant tiel grant del recursion fait al grantez, a lay et a ses heires, &c. pur ceo que riens

* et ceo n’est—&c. est, L. and M. and Roh.
† n’ad—ade, L. and M. and Roh.
‡ estate not in L. and M. nor Roh.
Of Discontinuance.

Sect. 610, 611.

his heires, &e. because nothing passed by force of such grant, but the estate which the grantor hath, &c. (1)

Sect. 610.

IN the same manner is it, if tenant for terme of life by his deed confirms the estate of his lessee for yeares, to have 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 tictle choses que passent en tictle 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, than a grant of a reversion by deed, though it be inrolled, and attornment 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.

MES auterment est quant tenant a terme de vie fait un feoffment en fee, car per titel feoffment le fee simple passa. Car tenant a terme d'ans poit faire feoffment en fee, et per son feoffment le fee simple passera, et encor il n'avoir al temps del feoffment fait forsque estate pur terme d'ans, &c.

"FORSQUE estate pur terme d'ans, &c." Here it is implied, that albeit the feoffment made by lessee for yeares be a feoffment between the feoffor and feoffee, and that by this feoffment the fee simple passeth by force of the livery, yet is it a disseisin to the lessor. And here it is worthy to be observed, that our author saith, that tenant for terme of yeares may make a feoffment; whereupon it followeth, that the feoffor may thereunto annex a warrantie, whereupon the feoffee may vouch him: but of this you shall reade more in the Chapter of Warranties, Sect. 698.

(1) [See Note 284.]

(1) [See Note 285.]
Of Discontinuance.

Sect. 612.

ITEM, si tenant en le taile granta son terri a un auter pur terme de vie de mesme le tenant en taile, et livrer a luy seisin, &c. et apres per son fait il releasa a le tenant et a ses heires tout le droit que il avoit en mesme la terre; en cest cas l’estate del tenant de la terre n’est pas enlarage per force de tel releas, pur cec que quant le tenant avoit en le terme per terme de vie de le tenant en le taile, donque il cvoit tout le droit que le tenant en le taile puissoit droitulment grantir ou releasser: * issint que per tel releas nuit droit passa, entant que son droit fuit ale adevant.

(1 Saund. 38. 3 Reg. 98.)

Sect. 613.

ALSO, if tenant in taile grant his land to another for term of the life of the said tenant in taile, and deliver to him seisin, &c. and after by his deed hee releaseth to the tenant and to his heires all the 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 term 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, insuch much as his right was gone before.

(1 Post 343. b. 346. a. Ant. 203. b.)

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 reversion or remainder, tenant in taile cannot lawfully make a greater estate than for term of his life; and therefore this release or grant is no discontinuance. But in regard of himselfe, this release or grant leaveth no reversion in him, but puts the same in abeience, so as after this release or grant made he shall not have any action of waste, &c.

"Grant &c. added L. and M. and Roh. (1) [See Note 286]"
OF DISCONTINUANCE.

there is implied that he shall not enter for a forfeiture, if after the
release or grant the lessee maketh a seffement in fee.

Section 614.

For if I give land to a man in
tail, saving the reversion to my
selfe, and after the tenant in tail
enfeoffeth another in fee, the seffee
hath no rightfull estate in the ten-
ements for two causes. One is, for
that by such seffement my reversion
is discontinued, the which is a wrong
and not a rightfull act. Another
cause is, if the tenant in tail dieth,
and his issue bring a writ of formedon
against the seffee, the writ and also
the declaration shall say, &c. that
the seffee by wrong him defeorses,
&c. Ergo if he defeareth him by
wrong, he hath no right estate.

Here Littleton proveth, that the seffee of tenant in tail hath
no rightfull estate, having respect to two persons; the one is
to the donor, whose reversion is divested and displaced;
and the other to the issue in tail, who is driven to his ac-
tion to recover his right.

A Tort lay deforce. [n] Deforciare is a word of art, and can-
not be expressed by any other word; for it signifies, to with hold
lands or tenements from the right owner; in which case either the
entire of the right owner is taken away, or the deforciator holdeth it
so fast, as the right owner is driven to his real præcept, wherein it
is said, unde A. cum injustis deforciat, or the deforciator so disturbeth
the right owner, as he cannot enjoy his owne: and therefore it is said,
Per hoc autem quod dicitur in brevi ultima præsentationis defor-
cient, videtur quisquam quod querens innuat per hoc quod d. for-
cerat sit in seismi, sicut in brevi de recto, sed revero non est ita, sed
satis deforciat qui possessorem uti seismi non permisit omnino vel
minùs commodè impedit præsentando, appellando, impetrando, sec-
cundum quod dicitur de dissipatore, satisfactit dissessiorem, qui uti non
permisit possessorem vel minus commodè licet omnino non expellit.
In this case that Littleton puttheth, the discontiniue being in by wrong,
is no diseseuer, abator, or intruder, but a deforciator; and hereof commeth
Deformance, and thus did antiquite describe it: [o] Deformance,
come si aucun enter en auter tenement tant comme le veray seigneur est
al market, ou alors, et retourne, etne poct aver entrein est celiuy de-
force et deboire. And for that at the first the withholding was with
violence and force, it was called a defforcement of the lands or ten-
ements; but now it is generally extended to all kindes of wrongfull
withholding
withholding of lands or tenements from the right owner. There is a
writ called a qodd ci deforcut, and lieth where tenant in tail, or
tenant for life, loseth by default, by the statute he shall have a
qodd ci deforcut against the recoveror, and yet he commeth in by
course of law (1).

Sect. 615.

ITEM, si terre soit lesee a un home
per terme de sa vie, le remainder a
un auter en le taile, si cehey en le re-
mainder voile graunter son fait, et le te-
nant a terme de vie atturna, cee n'est
pas discontinuance de le remainder*.

ALSO, if land bee let to a man
for terme of his life, the remain-
der to another in tail, if he in the
remainder will grant his remainder
to another in fee by his deed, and
the tenant for life attorne, this is no
discontinuance of the remainder.

Sect. 616. [322. a.]

ITEM, si home ad rent service ou
rent charge en taile, et il graunta
le dit rent a un auter en fee, et le
tenant attorne, † cee n'est pas dis-
continuance, &c.

ALSO, if a man hath a rent ser-
vice or rent charge in tail, and
bee grant the sayd rent to another
in fee, and the tenant attorne, this
is no discontinuance, &c.

Sect. 617.

ITEM, si home soit tenant en
taille of an advowson in grosse, ou
de un common in grosse, s'il per son
fait voile graunter l'advowson ou le
common a un auter en fee, cee n'est
pas discontinuance; car en tiels cases
les grantees n'ont estate forque pur
terme de vie de le tenant en taile que
fist le grant, &c.

ALSO, if a man bee tenant in
taille of an advowson in grosse, or
of a common in grosse, if he by his
deed will graunt the advowson or
common to another in fee, this is no
discontinuance; for in such cases the
grauntes have no estate but for terme of the life of tenant in tail
that made the grant, &c.

BY the cases in these three Sections it appeareth, that if a re-
mainder or a rent service, or a rent charge, or an advowson,
or a common, or any other inheritance that lieth in grant, be
granted by tenant in taille, it is no discontinuance, as formerly hath
been said.

[7] Note, here is an advowson named by Littleton, as a thing
that lieth in grant, and passeth not by livery of seisin.

Brac. 1 S. c. 2.
& c. 306, 376.
Brac. C. 187.
17. Pleas. Lib. 3,
c. 16.
(Foot. 335.)
31 E. 3, 37, 38.
42 E. 3, 3 b.
11 H. 6, 4.
6 H. 7, 37.
16 H. 8.
16 El. Dy. 325. b.

* &c. added L. and M. and Roh.
† &c. added L. and M. and Roh.

(1) [See Note 286.*]
Of Discontinuance.

Section 618.

And note, that of such things as passe by way of grant, by deed made in the country, and without livery, there such grant maketh no discontinuance, as in the cases aforesaid, and in other like cases, &c. And albeit such things be granted in fee, by fine levied in the king’s court, &c. yet this maketh not a discontinuance, &c.

Here is the general reason yeelded of the precedent cases and the like; for that it is a maxim in law, that a grant by deed of such things as doe lie in grant, and not in livery of seisin, doe worke no discontinuance (1). But the particular reason is, for that of such things the grant of tenant in taille worketh no wrong, either to the issue in taille, or to him in reversion or remainder; for nothing doth passe but onely during the life of tenant in taille, which is lawfull, and every discontinuance worketh a wrong, as hath beeene said.

[332. b.] If tenant in taille of a rent service, &c. or of a reversion, or remainder in taille, &c. grant the same in fee with warrantie, and leaveth assets in fee simple, and dieth, this is neither barre nor discontinuance to the issue in taille; but he may distraine for the rent or service, or enter into the land after the decease of tenant for life. But if the issue bringeth a foromedon in the descender, and admit himselfe out of possession, then he shall be barred by the warrantie and assets.

[3] Tenante in taille of a rent disseiseth the tenant of the land, and maketh a feoffment in fee with warrantie and dieth, this is no discontinuance of the rent, but the issue may distrayne 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 livery, as lands and tenements, yet if to the conveyance of the freehold or inheritance no livery of seisin is requisite, it worketh no discontinuance. [5] As if tenant in taille exchange lands, &c. or if the king being tenant in taille, grant by his letters patents the lands in fee, there is no discontinuance wrought.

"Per fine." Of a thing that lieth in grant, though it be granted by fine; yet it worketh no discontinuance; and this is regularly true.

† et sans livery, la—Ge. lov. L. and M. and Rob.
† et en—ou, L. and M. and Roh.
† Es not in L. and M. nor Roh.

(1) [See Note 287.]
Of Discontinuance.

Sect. 619, 620.

[1] If tenant in tail make a lease for years of lands, and after levie a fine, this is a discontinuance; for a fine is a seformance of record, and the freehold passeth. But if tenant in tail maketh a lease for his owne life, and after levie a fine, this is no discontinuance, because the reversion expectant upon a state of freehold which lieth onely in grant passeth thereby (1).

Sect. 619.

NOTA, si jexo done terre a un auter en taile, et il lassa mesme la terre a un auter pur terme d'ans, et puis le lessor granta la reversion a un auter en fee, et le tenant a terme d'ans atturut 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 devie; en cee case cee n'est discontinuance, nient obstet que le grant solet execute en la vie le tenant en taile, pur cee que al tems de lease fait a terme d'ans, nul novel fee simple fut reserve en le lessor, cee la reversion demurt a luy en taile, siccome il fuit devant le lease fait.]

NOTE, if I give land to another in taile, and hee letteth the same land to another for terme of years, and after the lessor granteth the reversion to another in fee, and the tenant for yeares attorne to the grantee, and the terme expireth during the life of the tenant in taile, by which the grantee 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 reserved in the lessor, but the reversion remained to him in taile, as it was before the lease made.

THIS is added to Littleton, and not in the original, and therefore I purposely omit it: yet is the case good in law, because neither the lease for yeares, nor the grant of the reversion, divesteth any estate.

Sect. 620.

MES, si le tenant en taile fait leas a terme de vie le lessee, &c. en cest case le tenant en le taile ad fait un novel reversion de || fee simple en luy; pur cee que quant il fist leas pur terme de vie, &c. il discontinua

BUT if the tenant in taile make a lease for terme of the life of the lessee, &c. in this case the tenant in taile hath made a new reversion of the fee simple in him; because when hee made the lease for life, &c. he discontinued

† Nota—inem. L. and M. and Roh. No part of these Sections within crochets is in L. and M. and Roh.

† In L. and M. and MSS. this Section begins thus: Si jexo done terre a un auter en le

tail, et il lassa mesme la terre a un auter per terme de vie, &c.

† en added L. and M.

de—en, L. and M.

(1) [See Note 288.]
of Discontinuance,

Sect. 620.

tinua le taile, &c. per force de mesme le leas, et auxy il discontinua ma reversion, &c. Et il coriçt que la reversion de fee simple soit en aucun person en tiel cas; et il ne poit estre en moy que sue donor, entant que mon reversion est discontinue; ergo il coriçt que la reversion de fee soit en le tenant en le taile, que discontinua ma reversion per tiel leas, &c. Et si en cest case le tenant en le taile graunta per son fuit cest reversion en fee a un auter, ci le tenant a terme de vie atturna, &c. et puis le tenant a terme de vie morust, vivant le tenant en le taile, et le grantee de la reversion entra, &c. en la vie le tenant en le taile, donques cee est un discontinuance en fee; et si apres le tenant en le taile morust, son issue ne poit enter, mes est mis a son briefe de formedon. Et la cause est, pur cee que cestuy que avoir le grant de tiel reversion en fee simple, avoir le seisin et execution de mesmes les terres ou tenements, d’aver a luy et a ses heires en son demesne comte de fee, en la vie le tenant en taile. * [Et cee est per force de grant de mesme le tenant en taile.

discontinued the tayle, &c. by force of the same lease, and also hee discontinued my reversion, &c. And it behoveth that the reversion of the fee simple be in some person in such case: and it cannot be in me which am the donor, inasmuch as my reversion is discontinued; ergo the reversion of the fee ought to be in the tenant in tayle, who discontinued my reversion by lease, &c. And if in this case the tenant in tayle grant by his deed this reversion in fee to another, and the tenant for life attorne, &c. and after the tenant for life dieth, living the tenant in taile, and the grantee of the reversion 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. And the cause is, for that he which hath the grant of such reversion in fee simple, hath the seisin and execution of the same lands or tenements, to have to him and to his heires in his desmesne 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.

"PUR terme de vie del lessee, &c." Here is implied, or for terme of another man’s life (I).

"Novel reversion de fee simple." Which must bee understood of a fee simple determinable upon the life of the lessee, which our author here calleth a fee simple; for if the lessee dieth the donee is tenant in taile againe, as hee was before: and that is the reason that if in that case hee granteth over the reversion 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 reversion gained upon that discontinuance is void also.

If tenant in taile maketh a lease for three lives according to the statute of 32 H. 8. that is no discontinuance of the estate taile or of the reversion, because it is authorised by act of parliament, whereunto every man in judgement of law is partie.

And

4 le taile, &c. per force de mesme le leas, et auxy il discontinua, not in L. and M. nor Boh.

* No part of this or of the following Section within crotchets is in L. and M. and Roh.

(1) [See Note 289]
And yet in some cases the freehold may be discontinued and not
the reversion. As the husband and wife make a lease for life by deed (2) of
the wife’s land, reserving a rent, the husband dieth; this was a discontinuance at
the common law for life; and yet the reversion was not discontinued, but remained in
the wife. Otherwise it is if the husband had made the lease alone.333. b.

"Et puis le tenant a terme de vie moruit, &c." The like law is
if the tenant for life surrender to the grantee, or if the grantee
recover in an action of waste, or enter for the forfeiture.

"Avait seisin et execution." And here it is to be observed, that
when the reversion in this case is executed in the life of tenant in
taile, it is equivalent in judgement of law to a seffiment in fee, for
the state for life passed by livery.

If tenant in taile make a lease for life, the remainder in
fee, this is an absolute discontinuance, albeit the remainder be not
executed in the life of tenant in taile, because all is one estate,
and passeth by one livery. And so note a diversitie betweene a grant of
a reversion, and a limitation of a remainder. B. tenant in taile
maketh a gift in taile 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 upon the collaterall heire, because A. had not seisin
and execution of the reversion of the land in his demesne as of fee, as
Littleton here speakeh. But if tenant in taile 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 taile.

If tenant in taile of a manor whereunto an advowson is
appendant, maketh a seffiment in fee by deed (as it ought to be)
of one acre with the advowson, and the church becommeth void,
and the seffee present, tenant in taile dieth, the church becommeth void; the issue shall not present until he hath re-continued the
acre. But if the seffee had not executed the same by presentment,
then the issue in taile should have presented. And so was it at the common law, of the husband seised in the right of his
wife, mutatis mutandis.

If a fine be levied to a tenant in taile, and he granteth and ren-
dreth 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 taile.

If tenant in taile make a lease for life of the lessee, and after
grant the reversion 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 (1).

"Et ceo est per force del grant de meisme le tenant en taile." Hereupon Littleton himselfe is of the same opinion, (2) as it appareath be

(2) See Note 290. (1) See Note 291.
he was in our bookes; that if tenant in taille make a lease for life, and grant the reversion in fee, and the lessee attorne, and that grantee granteth it over, and the lessee attorne, and then the lessee for life dieth, so as the reversion is executed in the life of tenant in taille, yet this is no discontinuance, but that after the death of tenant in taille the issue may enter; because (as Littleton here saith) he is not in of the grant of the tenant in taille, but of his grantee.

If at this day tenant in taille make a lease for life, and after by deed indented and inrolled according to the statute he bargained and selleth the reversion to another in fee, and the lessee dieth, so as the reversion is executed in the life of tenant in taille; albeit the bargainee is not in the per by the tenant in taille, yet inasmuch as he claimeth the reversion immediately from him, which is executed in his lifetime, this is a discontinuance. And so it is, and for the same cause, if tenant in taille had granted the reversion to the use of another and his heires. If tenant in taille maketh a lease for life, and after disseiseth the lessee for life, and maketh a seoffiment in fee, the lessee dieth, and then tenant in taille dieth; albeit the fee be executed, yet for that the fee was not executed by lawfull means, (as in all the cases of Littleton it appeareth it ought to be) it is no discontinuance.

[334. a.] Sect. 621.

EN mesme le manner serra, si en le case avandit le tenant a terme de vie apres l'attournement al grantee ust atien en fee, et le grantee ust enter pur forfeiture de son estate, et puis le tenant en taille ust devie, c'est un discontinuance, causa qua supra.]

IN the same manner shall it be, if in the case aforesaid the tenant for terme of life after the attournement 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, causa qua supra.

THIS is added in this place, but in the original it commeth in after in this Chapter*.

Sect. 622.

MES en cest case, si tenant en taille quegrant a la reversion, &c. morust, vivant le tenant a terme de vie, et puis le tenant a terme de vie morust, et puis celuy a que le reversion fait grant enter, &c. donque ceo n'est pas discontinuance, mes que l'issue del tenant

BUT in this case, if tenant in taille that grants the reversion, &c. dieth, living the tenant for life, and after the tenant for life dieth, and after hee to whom the reversion was granted enter, &c. then this is no discontinuance, but that the issue of the

* But it does not appear in this Chapter in L. and M. nor Roh. nor in MSS.
tenant en taille poit bien enter sur le grantee del reversion; pur cee que le reversion que le grantee avoir, &c. ne fuit execute, &c. en le vie le tenant en taille, &c. Et issint il est grand diversite quant tenant en taille fait un leas pur terme d'ans, et lou il fait leas pur terme devie; car en l'un cas il ad reversion en taille, et en l'autre cas il ad un reversion en fée.

Of this sufficient hath beene said before, and is of itselfe 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.

Sect. 623.

Si terre soit done a un home et a ses heires males de son corps engendres, le quel ad issue deux fils, et l'eignes fils ad issue file et decry,* et le tenant en taille fait un leas pur terme des ans et de cry, ore le reversion descendist a le fils puissie, pur cee que le reversion fuit force en le taille, et le fils puissie est heire male, &c. Mes si le tenant ust fait un leas pur terme de vie, &c. et puis morust, ore le reversion descendist a le file del eignes fils, pur cee que le reversion est en fée simple, et la file est heire general, &c.

This is evident also, and needeth no explanation.

Sect. 624.

Si home soit seisie en taille de terres devisables per testament, &c. et il cee devisa a un autres en fée, et morust, et l'autre entre, &c. cee n'est pas discontinuance, pur cee que nul

For if land bee given to a man and to his heires males of his body engendred, who hath issue two sounes, and the eldest sone hath issue a daughter and dieth, and the tenant in taille maketh a lease for yeares and die, now the reversion descendeth to the younger sone, for that the reversion was but in the taille, and the youngest sone is heire male, &c. But if the tenant had made a lease for life, &c. and after died, now the reversion descendeth to the daughter of the elder brother, for that the reversion is in the fée simple, and the daughter is heire general all, &c. (1)

This is evident also, and needeth no explanation.

(1) See the note on the following Section.
Of Discontinuance.

Sect. 625.

Although discontinuance fuit fait in the life of the tenant, &c.

This is manifest, and needeth no explanation: only this is to be observed, that no discontinuance can be made by tenant in tail, but such as is made and taketh effect in his life-time, which is here implied in the (\&c.)

Sect. 625.

Item, si terre soit done en taile, savant lereversion al donor, et puis le tenant en taile per son fait enfoffa le donor, a aver et tener a tuy et a ses heires atoutes jours, et tiver a tuy seisin accordant, \&c. cee n'est pas discontinuance, pur cee que nul poit discontinuer l'estate en le taile, sinon que il discontinue le reversion celuy que ad le reversion, \&c. ou le remainder, si ascem ad le remainder, \&c. Et entant que per tel feoffment fait a le donor (le reversion abongues estant en by) son reversion ne fuit discontinu ne alterate, \&c. cest feoffment n'est pas discontinuance, \&c.

Also, if land be given in tail, saving the reversion to the donor, and after the tenant in tail by his deed enfoffe the donor, to have and to hold to him and to his heirs for ever, and deliver to him seisin accordingly, \&c. this is no discontinuance, because none can continue the estate tail, unless he discontinueth the reversion of him who hath the reversion, \&c. or remainder, if any hath the remainder, \&c. And inasmuch as by such feoffment made to the donor (the reversion then being in him) his reversion was, not discontinued nor altered, \&c. this feoffment is no discontinuance, \&c.

And of this opinion is Littleton \[a\] in our booke, and saith that so it was adjudged.

"Enfoffe le donor, \&c." This must be understood where the reversion of the donor is immediately expectant upon the estate of the donee; [6] for if a man make a gift in tail, the remainder in tail, reserving the reversion to himselfe; in this case if the donee enfoffe the donor, this is a discontinuance, because there is a meane estate; and so doth Littleton here put his case of a reversion immediately expectant upon the gift in tail. Also it is to be intended of a feoffment made to the donor solely or only; for if the donee enfoffe the donor and a stranger, this is a discontinuance of the whole land.

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, forasmuch as the limitation of the fee should worke the wrong, it enureth to the lessor as a surrender for the one moity, and a forfeiture as to the remainder of the stranger; for he cannot give 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 enthrall, he shall take the benefit of it. But if two joyntenants be, and one of them enfoffe his companion and a stranger,
tenant en taile poit bien enter sur le graunteel del reversion; pur cee que le reversion que le graunteel avoir, &c. ne fuit execute, &c. en le vie le tenant en taile, &c. Et iesint il est grand diversite quant tenant en taile fait un leas pur terme d'ans, et lou il fait leas pur terme devie; car en l'un cas il ad reversion en taile, et en l'autre cas il ad un reversion en fee.

OIf this sufficient hath beene said before, and is of itselde mani-
fest, and needeth no explication.

Like law was at the common law of a husband seised of land in
right of his wife, mutatis mutandis.

Sect. 623.

OF if land bee given 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
years and die, now the reversion
descendeth to the younger sonne,
for that the reversion 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 af-
ter died, now the reversion descend-
eth to the daughter of the elder bro-
ther, for that the reversion is in the
fee simple, and the daughter is heire
general, &c. (1)

This is evident also, and needeth no explanation.

Sect. 624.

ITEM, si home soit seise en taile
de terres devisables per testament,
&c. et il cee devisa a un auter en fee,
et morust, et l'auter enter, &c. cee
n'est pas discontinuance, pur cee que

* et le tenant en taile fait un leas pur terme des ans, et devy, not in L. and M. nor Bob.

(1) See the note on the following Section.
Of Discontinuance.

Sect. 625.

null discontinuance fuit fait en la vie del tenant en le taile, &c.

This is manifest, and needeth no explanation: only this is to be observed, that no discontinuance can be made by tenant in tail, but such as is made and taketh effect in his life-time, which is here implied in the (&c.)

Sect. 625.

ITEM, si terre soit done en taile, savant le reversion al donor, et puis le tenant en taile per son fait enfeoffa le donor, a aver et tener a luy et a ses heires a toutes jours, et luer a luy seisin accordant, &c. ceo n'est pas discontinuance, pur ce que null poit discontinuer l'estate en le taile, sinon que il discontinue le reversion celuy que ad le reversion, &c. ou le remainder, si ascun ad le remainder, &c. Et entant que per tiel feoffment fait a le donor (le reversion adonques estant en luy) son reversion ne fuit discontinue ne alterate, &c. c'est feoffment n'est pas discontinuance, &c.

ALSO, if land be given in tail, saving the reversion to the donor, and after the tenant in tail by his deed enfeoffe the donor, to have and to hold to him and to his heirs for ever, and deliver to him seisin accordingly, &c. this is no discontinuance, because none can discontinue the estate tail, unless he discontinueth the reversion of him who hath the reversion, &c. or remainder, if any hath the remainder, &c. And inasmuch as by such feoffment made to the donor (the reversion then being in him) his reversion was not discontinued nor alfore, &c. this feoffment is no discontinuance, &c.

AND of this opinion is Littleton [a] in our books, and saith that so it was adjudged.

"Enfeoffe le donor, &c." This must be understood where the reversion of the donor is immediately expectant upon the estate of the donee; [b] for if a man make a gift in tail the remainder in tail, reserving the reversion to himself: in this case if the donee enfeoffe the donor, this is a discontinuance, because there is a mean estate; and so doth Littleton here put his case of a reversion immediately expectant upon the gift in tail. Also it is to be intended of a feoffment made to the donor solely or only; for if the donee enfeoffe the donor and a stranger, this is a discontinuance of the whole land.

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, forasmuch as the limitation of the fee should worke the wrong, it emueth to the lessor as a surrender for the one moiety, and a forfeiture as to the remainder of the stranger; for he cannot give 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 moiety, and when the lessor entreth, he shall take the benefit of it. But if two joynentans be, and one of them enfeoff his companion and a stranger,
a stranger, and make livery to the stranger; this shall vest only in
the stranger, because the livery cannot ensue to his companion.

"Nul point discontinue l'estate en tailed, cesso que il discontinue
le reversion, &c. ou le remainder, &c." And therefore for this
cause, if the reversion or remainder be in the king, the tenant in
taille cannot discontinue the estate taille (c). But tenant in taille,
the reversion in the king, might have barred the estate taille by a
common recovery, until the statute of 34 H. 8. c. 20. which re-
strainseth such a tenant in taille; but that common recovery neither
barred nor discontinued the king’s reversion (1).

Note, the reversion may be reverted, and yet the discontinu-
ance remaine. (d) As if a sene covert be tenant for life, and the
husband make a fecesment in fee, and the lessor enter for the for-
feiture; here is the reversion reverted, and yet the discontinuance
remained at the common law.

Sect. 626.

E N same manner is it, where
are given to a man in taille,
remainder a un auter en fee, and the
tenant in taille enseoffa cesto que est en
the remainder, a avoir et tenir a lui et
a ses heires; cett n’est pas disconti-
nuance, cause qui suprâ.

"L E remainder a un auter." Here it appeareth that (as hath
beene said in case of a reversion) the remainder must be
immediately expectant upon the estate taille.

Sect. 627.

I TEM, et un abbe ad un rever-
sion, ou rent service, ou rent
charge, et volle graunter * cel rever-
sion, ou rent service, ou rent charge, a
un auter en fee, et le tenant atturna,
&c. cett n’est pas discontinuance.

Also, if an abbot hath a rever-
sion, or a rent service, or a rent
charge, and he will grant this rever-
sion, or rent service, or rent charge,
to another in fee, and the tenant at-
torne, &c. this is no discontinuance.

Of inheritances that lie in grant, sufficient hath beene said before.

* cel reversion, ou rent service, ou rent charge—un d’eux, L. and M. and Roh. but as
above in MSS.

(1) See Stone v. Newman, 2 Cro. 427. (2) [See Note 293.]
Of Discontinuance. Sect. 628—630.

Sect. 628.

En mesme le manner lou abbe est seise d’un advowson, ou de tielx choses que passent per noy d’un grant sans liverie de seisin, &c.

In the same manner where an abbot is seised of an advowson, or of such things which passe by way of grant without liverie of seisin, &c.

Here it appeareth, (as hath beene said) that an advowson doth not lie in liverie, but in grant.

Sect. 629.

ITEM, si tenant en taile lessa sa terre a un auer pur terme de vie, et puis il graunta en fee le recesson a un auer, et le tenant allurna, et puis le tenant a terme de vie aliena en fee, et le granteen de recesson entra, &c. en le vie le tenant en le taile, et puis le tenant en le taile morust, son issue ne poit enter, mes est mis a son briefe de formedon, pur ces que le recesson en fee simple que le graunter avoit per le grant del tenant en le taile, fut execute en le vie de mesme le tenant en le taile, et pur ces est un discontinuance en fee, &c.

Also, if tenant in taille letteth his land to another for life, and after he granteth in fee the reversion to another, and the tenant attorne, and after the tenant for life alien in fee, and the grauntee of the reversion enter, &c., in the life of the tenant in taille, and after the tenant in taille dieth, his issue shall not enter, but is put to his writ of formedon, because the reversion in fee simple which the graunter had by the grant of the tenant in taille, was executed in the life of the same tenant in taille, and therefore it is a discontinuance in fee, &c.

Of this sufficient hath beene said before.

[356. a.]

Sect. 630. (1 Roll. Abr. 631.)

Et nota, que ascuns font discontinuances pur terme de vie. Sicome tenant en le taita fait un lease pur terme de vie, savant le recesson al tay auxy longement que le recesson est al tenant en taita, ou a ses heires; ces n’est discontinuance, forspace durant la vie le tenant a terme de vie, &c. Et si tiel tenant en taita dona les tenements a un auer en taita, savant le recesson, donques ces n’est discontinuance durant le second taita, &c.

And note, that some make discontinuances for term of life. As if tenant in taille make a lease for life, saving the reversion to him as long as the reversion is to the tenant in taille, or to his heyses; this is no discontinuance but during the life of tenant for life, &c. And if such tenant in taille giveth the lands to another in taille, saving the reversion, then this is a discontinuance during the second taille, &c.

This
THIS is manifest, and hath beene handled before, and needeth no explanation; onely this is to be observed, where Littleton putteth hereafter cases of discontinuances by feoffement, &c. he hath a double entendment. First, by feoffement, or by any other conveyance which may make a discontinuance. Secondly, (&c.) implieth a discontinuance by a gift in tail, or a lease for life, &c.

Sect. 631.

Mes lou le tenant en tayle fait un lease pur terme d'ans, ou pur terme de vie, le remainder a un auter en fee, et delivera livery de seisin accordant, cesto est discontinuance en fee, pur vero que le fee simple passa per force de livery de seisin, &c.

But where the tenant in tayle maketh a lease for yeares or for life, the remainder to another in fee, and delivereth livery of seisin accordingly, this is a discontinuance in fee, for that the fee simple passeth by force of the liverie de seisin, &c.

This is evident also, and hereof sufficient hath beene spoken before.

Sect. 632.

Est ascavoir, que ascuns tiels discontinuances sont fait sur condition, &c. et pur vero que les conditions sont enfreinte, &c. ou pur auters causes, solonque le course de la ley, tiels estates sont defeats, donques sont les discontinuances defeats, et ne tolent ascun home per force de eux de son entrie, &c.* Come si le baron soit seise de certaine terre en droit sa femme, et fait feoffement en fee sur condition, et devie, si le heire apres enter sur le fooffice pur le condition enfreint, l'entrie la femme est congeseable sur le heire, pur vero que per l'entrie del'heire le discontinuance est defeat, come est adjudge.

And it is to be understood, that some such discontinuances are made upon condition, &c. and for that the conditions be broken, &c. or for 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 upon condition, and dyeth, if the heire after enter upon the feoffice for the condition broken, the entrée of the wife was congeseable upon the heire, for that by the entry of the heire the discontinuance is defeated, as is adjudged.

"Discontinuances fait sur condition, &c." Here is to be understood a diversite between a condition in deed, whereof Littleton here speaketh, and a condition in law, whereof somewhat hath beene said before in this chapter, viz. where the femme is tenant for life, and the husband maketh a feoffement in fee, and the lessor entreth for the condition in law.

Conditions

* The remaining part of the above Section is not in L. and M. nor Roh. nor in Pynson, nor MSS. But in all, the case of the grandfather, father, and son, Sect. 637. is here inserted, with some small variation.
Lib. 3. Of Discontinuance.

Sect. 633.

"Conditions sunt enfreinte, &c." Here is implied, or any cause given either by disabilitie of the feoffees, or by any condition performed on the part of the seffor, or otherwise, whereby the state is in any sort avoided.

"Come si le baron soit sejus de certaine terre en droit sa femme, &c." Here it appeareth, that for the condition broken, the heire of the husband may enter; for albeit no right descend from the husband to his heire, yet the title of entry by force of the condition which the husband created upon the feoffement, and reserved to him and his heires, doth descend to his heire; and Littleton saith truly, that so it hath beene adjudged.

"Sur le heire." Nota, when the heire in this case hath entred for the condition broken, and hath avoided the feoffement, the estate of the heire vanishteth away, and presently the estate vesteth in the feme or her heires, without any entry or claime by her or them; for the heire entretith in respect of the condition, upon the reall contract, and not of any right, as hath beene said; and if the husband himselfe had re-entred, the state had vested in his wife: and therefore where Littleton and our booke saith, that the wife shall enter upon the heire, the meaning is, that after the re-entry of the heire she may enter.

Sect. 633.

ITEM, si feme inheritrix que ad un baron, quel baron est deins age, et il esteant deins age fait un feoffment de les tenements son feme en fee, et morust, il ad este question, si la feme poit enter, ou non, &c. Et il semble a usuncs, que l'entry la feme apres la mort sa baron, est congabge en cest cas. Car quant sa baron feasoit tiel feoffment, &c. il puissoit bien enter, nient contristante tiel feoffment, &c. durant la couverture; et il ne puissoit enter en son droit demesne, mes en le droit la feme: ergo, tiel droit que il avoir d'entrer en droit sa feme, &c. est droit d'entrer demurt al feme apres son decease.

Also, if a woman inheritrix hath a husband who is within age, and hee being within ago maketh a feoffment 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 entrie of the wife after the death of her husband, is congabge in this case. For when her husband made such feoffment, &c. he might well enter, notwithstanding such feoffment, &c. during the couverture; 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.

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 descends unto 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 man's life, and make a feoffment in fee, and cesty que vie dieth, the infant himselfe shall not enter, because he hath no right at all.
Il the husband within age make a seisin in fee, and die, his wife may enter, as Littleton here holdeth; or the heir of the husband in respect of the new reversion succeeds to his new entry. But if the heir enter, presently is entry a seisin vacated. It tenant in being is within the use of one and twenty years make a seisin in fee, and after is possessed of seisin and death, the entry of the issue is not lawful; for if entry is not lawful in respect of his estate only, but of his blood also which is corrupted; and therefore in that case he is due unto his former.

If husband hath within age, and they by deed indented joint in a seisin reserving a rent, the husband dieth, the wife may enter, and have a dum suiat intra statem. But if she were of full age, she shall not have a dum suiat intra statem, for the nonage of her husband, albeit they be but one person in law.

**Sect. 634.**

Et il y ad estce dit, que si deux joyntenants estant des deo... il y ad estce dit, que si deux joyntenants estant des deo...
Of Discontinuance.

Sect. 635, 636.

Sect. 635.

ET auxy quant un enfant fait un feoffment estant deins age, ceo ne luy grevera ne ledra, mes que il poit enter bien, &c. car ceo serroit encounter reason, que tiet feoffment fuit per celuy que ne fuit able de faire tiet feoffment, grevera ou ledra auter, de lollocr eux de tour entre, &c. Et pur ceux causes il semble a as-cuns, que apres la mort de tiel baron issint estant deins age al temps de le feoffment, &c. que sa feme bien poit enter, &c.

A ND also when an infant make a feoffment being within age, this shall neither grieve 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 grieve 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.

MES que il poit enter bien, &c. Here is implied, that he might enter either within age, or at any time after full age, and likewise after his death his heire may enter. *Mediorem enim conditionem facere potest minor deteriorem nequaquam.*

Nota, A speciall heire shall take advantage of the infancie of the ancestor. As if tenant in taile of an acre of the custome of borow English make a feoffment in fee within age, and dieth, the youngest sonne shall avoid it; for he is privie in bloud, and claimeth by descent from the infant.

And so if tenant in taile to him and the heires females of his bodie make a feoffment in fee and dieth within age, having issue a sonne and a daughter, the daughter shall avoid the feoffment. And so note, that a cause to enter by reason of infancie is not like to conditions, warranties, and estoppels, which ever descend to the heire at the common law.

The residue of this Section upon that which hath beene said is evident.

Sect. 636.

ITEM, si feme inheritrix pretut baron, et int issue fits, et le baron morust, et el pret auter baron, et le second baron lessa la terre que il ad en droitz sa feme a un auter pur termes de sa vie, et puis la feme morust, et puis le tenant a termes de vie surrendrist son estaste a le second baron, &c. quere, si le fits le feme poit enter en cest cas sur

ALSO, if a woman inheritrix taketh husband, and they have issue a sonne, and the husband dieth, and she takes another husband, and the second husband letteth the land which he hath in right of his wife to another for termes of his life, and after the wife dieth, and after the tenant for life surrendereth his estate to
sur le second baron durant la vie le tenant a terme de vie; &c. Men il est cleere ley, que aprés la mort le tenant a terme de vie, le flos la femme peut enter; por cux que le discontien-
ance, que fuit tantsolemment por terme de vie, est determine, &c. por la mort
de menme le tenant a terme de vie.

"SURRENDER," sursum reddito, properly is a yielding up
an estate for life or yeares to him that hath an immediate
estate in reversion or remainder, wherein the estate for life or yeares
may drown by mutual agreement betweene them (1).

Note, there be three kinde of surrenders, viz. a surren-
derer properly taken at the common law, which is here be-
fore described, and whereof Littleton speakeith (1). Secondly, a
surrender by custome of lands holden by copy, or of customary es-
tates, whereof you have read before, Sect. 74. and a surrender im-
properly 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.

A surrender properly taken is of two sorts, viz. a surrender in
deed, or by expresse words, (whereof Littleton here puteth an ex-
ample) and a surrender in law wrought by consequent by oper-
ation of law. Littleton here puteth his case of a surrender of an es-
tate in possession, for a right cannot bee surrendered. And it is to
be noted, that a surrender in law is in some cases of greater force
than a surrender in deed. As if a man make a lease for yearaes to
begin at Michaelmas next, this future interest cannot be surren-
dred, because there is no reversion wherein it may drown; but by
a surrender in law it may be drowned. As if the lessee before
Michaelmas take a new lease for yearaes either to begin presently,
or at Michaelmas, this a surrender in law of the former lease.

Fortior & agilior est dispositio legi quam hominis (2).

Also there is a surrender without deed, whereof Littleton putth
here an example of an estate for life of lands, which may be sur-
rendered without deed, and without livery of seisin; because it is
but a yielding, or a restoring of the state againe to him in the
immediate reversion or remainder, which are always favoured in law.
And there is also a surrender by deed; and that is of things that
lie in grant, whereof a particular estate cannot commence with-
out deed, and by consequent the estate cannot be surrendered
without deed. But in the example that Littleton here putthe, the
estate

(1) [See Note 294.]

[338. a.]

(1) [See Note 294.]

(2) [See Note 296.]
estate might commence without deed, and therefore might be surrendered without deed. And albeit a particular estate be made of lands by deed, yet may it be surrendered without deed, in respect of the nature and quality of the thing demised, because the particular estate might have been made without deed; and so on the other side. If a man be tenant by the courtesy, or tenant in dower of an advowson, rent, or other thing that lies in grant; albeit there the estate begin without deed, yet in respect of the nature and quality of the thing that lies in grant it cannot be surrendered 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 reversions, though they be of lands, are things that lie in grant, they cannot be surrendered without deed. See in my Reports plentiful matter of surrenders.

"Quære, si le fit a feme post enter, &c." Here Littleton maketh a quære. So as grave and learned men may doubt, without any impetration to them; for the most learned doubteth most, and the more ignorant for the most part are the more bold and peremptory.

It is holden of some, that after the surrender the issue in tail during the life of tenant for life may enter; for that having 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 vanished and gone; as if tenant in tail make a lease for life, whereby he gaineth a new reversion (as hath beene said) if tenant for life surrender to the tenant in tail, the estate for life being drowned, the reversion gained by wrong is vanished and gone, and he is tenant in tail againe against the opinion otber of Portington, 21 H. 6. 53.

But herein are two diversities worthy of observation. The first is, that having regard to the parties to the surrender, the estate is absolutely drowned, as in this case betweene the lessee and the second baron. But having regard to strangers, who were not parties or privies thereunto, lest by a voluntary surrender they may receive prejudice touching any right or interest they had before the surrender, the estate surrendered hath in consideration of law a continuance (1). As if a reversion be granted with warrantie, and tenant for life surrender, the grantee shall not have execution in value against the grantor, who is a stranger during the life of tenant for life; for this surrender shall worke no prejudice to the grantor who is a stranger.

So if tenant for life surrender to him in reversion being within age, he shall not have his age; for that should be a prejudice to a stranger, who is to become demandant in a real action.

If tenant for life grant a rent charge, and after surrender, yet the rent remaineth, for to that purpose he commeth in under the charge. Causa qud avitra.

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 claimeth under his estate; but if tenant for life grant a rent in

(1) On the surrender of terms of years by years; see Hughes v. Robotham, 1st Cro. one termor for years to another termor for 302.
in fee, and after incoffice the grantee, and the lessor enter for the forfeiture, the rent is revived, for the lessor doth claim above the feoffment. But if I grant the reversion of my tenant for life to another for term of his life, and tenant for life attorn, now is the waste of tenant for life dispunishable (2). Afterwards I release to the grantee for life and his heirs, or grant the reversion to him and his heirs; 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 have no continuance in the eye of the law as to him, but he shall be punished for waste done afterward.

The second diversitie is, that for the benefit of an estranger the estate for life is absolutely determined. As if he in the reversion make a lease for yeares, or grant a rent charge, &c. and then the lessee for life surrender, the lease or rent shall commence maine tenant. 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 adjudged in law. Here note a diversitie, when it is to the prejudice of a stranger, and when it is for his benefit.

If a man maketh a lease to A. for life, reserving a rent of 40 shillings to him and his heirs, the remainder to B. for life, the lessor grant the reversion in fee to B. A. attorn, B. shall not have the rent; for that although the fee simple doe drowne the remainder for life betweene them, yet as to a stranger it is in case; and therefore B. shall not have the rent, but his heir shall have it.

A master of an hospital being a sole corporation, by the consent of his brethren makes a lease for yeares of part of the possessions of the hospital; afterwards the lessee for yeares is made master, the term is drowned; for a man cannot have a term for yeares in his owne right and a freehold in auter droit to consist together (as if a man lessee for yeares take a femme lessor to wife.) (3) [a] But if a man may have a freehold in his owne right and a term in auter droit: and therefore if a man lessor take the femme lessee to wife, the term is not drowned, but he is possessed of the term in her right during the coverture (6). So if the lessee make the lessor his executor, the term is not drowned. Causa gud sufru. (4)

But if it had beene a corporation aggregate of many, the making of the lessee master had not extinguished the term, no more than if the lessee had beene made one of the brethren of the hospital.

* Sect. 637.

NOTA, que un estate taile ne peut este discontinue, mes la ou estluy qu'fait le discontinue fuit un foils seisse per force de le taile, sinon

NOTE, that an estate taile cannot bee discontinued, but there where hee that makes the discontinuance was once seised by force of the

* The part of this Section within crotchets is not either in L. and M. nor Roll. nor MSS. and the remainder of this Section in those copies immediately follows (with a small variation) that part of the work which is distinguished by Sect. 622.

(2) See note 2. ante 218. b.
Of Discontinuance.

the tail, unless it be by reason of a warranty, &c. As if there be grandfather, father, and son, and the grandfather is tenant in tail, and is disseised by the father who is his son, and the father maketh a feoffment of this without warranty and die, and afterwards the grandfather dies, the son may wel enter upon the feoff, because this was no discontinuance, inasmuch as the father was not seised by force of the entaille at the time of the feoffment, &c. but was seised in fee by the disseisin of the grandfather.

"Un foit." Here it is to be observed, that it is not necessary that the tenant in tail be ever seised of an estate tail at the time when the discontinuance of the whole estate is begun: as if tenant in tail make a lease for life, whereby he gaineth, as hath beene said, a fee simple by wrong; in this case if he grant the reversion in fee, and the lessee dieth, the whole estate is discontinued; and yet at the time of the grant (by which the discontinuance contineth) hee was not seised by force of the tail; and therefore Littleton materially added these words (un foit) that is, that hee was once seised by force of the estate tail: and seeing that (as hath beene said) a discontinuance is a privation, the rule of law agreeth well with the rule of philosophie, that omnis privatio pre-supponit habitum, and therefore he cannot discontinuance that estate which he never had.

"Simon que il soit per reason del garnantie, &c." For in many cases a warranty added to a conveyance is said to make a discontinuance, ab effectu, although he that made the conveyance was never seised by force of the estate tail, because it taketh away the entrie of him that right hath, as a discontinuance doth. As if tenant in tail be disseised and dieth, and the issue in tail release to the disseisor with warranty; in this case the issue was never seised by force of the tail; and yet this hath the effect of a discontinuance by reason of the warranty, and the reason hereof appeareth before in this Chapter.

"Le fite pois enter." But if the father that made the feoffment had survived the grandfather, he should never have entred against his own feoffment; but albeit the father had survived, yet after his decease the sonne should have entred, for the reason here yelded by Littleton. But if the feoffment had beene with warranty, then it had wrought the effect of a discontinuance: and therefore Littleton saith sans garnantie, without warranty,
Sect. 658.

Although, if tenant in taille make a lease to another for term of life, and the tenant in taille hath issue and dieth, and the reversion descendeth to his issue, and after the issue granted the reversion to him descendeth to another in fee, and the tenant for life attorne and die, and the grantee of the reversion enter, &c., and is seized in fee in life of the issue, and after the issue in taille hath issue a son and dyeth, it seems that this is no discontinuance to the son, but that the son may enter, &c., for that his father, to whom the reversion of the fee simple descended, had never any thing in the land by force of the entail, &c.

Of this opinion is Littleton in our books.

"Le grantor del reversion enter, &c." Here it is to be understood and observed, that in this case of the grant of the reversion Littleton doth not say sans garrantie; because if a warrantee had been added, it had wrought no discontinuance, for that (as hath beene said) the discontinuance in judgement of law was but for life: but when the addition of a warrantee doth work a discontinuance, then Littleton saith, sans garrantie, as you may observe often in this Chapter.

Sect. 659.

For if a man seised in the right of his wife, leteth the same land to another for term of life, now is the reversion of the fee simple to the husband, &c. And if the husband dieth, living his wife and the tenant for life, and the reversion descend to the heir of the husband, if the heir of the husband grant the reversion to another in fee, and the tenant attorne, &c., and afterwards the tenant for life dieth, and the

* et devie, et le grantor del reversion enter, &c.—Et cie et puis le tenant a terme de vie morust, et celuy en la reversion enter, &c. L. and M. and Rob.

† et not in L. and M. nor Rob.

‡ en cest cas not in L. and M. nor Rob.
Of Discontinuance.

Sect. 640, 641.

"Car si home seisie en droit sa feme, lessia, &c." Here Littleton putteth his case where the baron onely makes a lease for life; for if he and his wife joyne in a lease by deed, there the reversion is not discontinued. See before, Sect. 620. More need not to be said hereof, in respect the like case of tenant in tail hath been explained before.

[340. a.]

Sect. 640.

And so it seemeth, that men which are inheritable by force of an entail, and never were seised by force of the same entail, that such feoffements or grants by them made without clause of warranty, is no discontinuance to their issues after their decease, but that their issues may well enter, &c. albeit they which made such grants in their lives were forebarred to enter by their owne act, &c.

Sect. 641.

And if tenant in tail hath issue two sonnes, and the eldest dissceth his father, and thereof maketh a feoffment in fee without clause of warranty, and die without issue, and after the father die, the youngest son may well enter upon the feoffee; for that the feoffement of his elder brother cannot be a discontinuance, because he was never seised by force of the same tailye. For it seemeth to be against reason, that by matter in fact, &c. without clause of warranty;

* fait—tail, L. and M.
Of Discontinuance.

unques seise per force de mesmo le taille.

NOTE, there also in these two Sections appeareth, that (as hath been said before) a warrantie, though he were never seised by force of the tail, may work the effect of a discontinuance.

"Home poest discontinuer un fait, &c." This is mistaken, and should be, home poest discontinuer un taile; and so is the original.

Sect. 642. [340. b.]

\[\text{NOTA, si soit seignior et tenant, et le tenant dona les tenemens a un autre en } \text{ taille, le remainder a un autre en fee, et puis le tenant en taille fait un les a un home pur terme de vie, &c. selon le reversion, &c. et puis granta le reversion a un autre en fee, et le tenant a terme de vie atturra, &c. et puis le grantee de la reversion murust sans heire, ore mesme le reversion devient al seignior per voy d'escheate. Si en cest caze le tenant a terme de vie deviast, et le seignior per force de son escheate enter en la vie le tenant en le taille, et puis le tenant en la taille morust, il semble en cec caze que cec n'est pas discontinuance al issue en le taille, ne a celuy en le remainder, mes que il poit bien enter, pur cec que le seignior es eis per voy d'escheate, et nemy per le tenant en la taille, &c. Mes seceu esset, si le reversion est este execute en le grantee en la vie de tenant en la taille, car adonque ust le grantee est eis en les tenemens per le tenant en la taile, &c.]

NOTE, if there be lord and tenant, and the tenant giveth lands to another in taille, the remainder to another in fee, and after the tenant in taille makes a lease to a man for a term of life, &c. saving the reversion, &c. and after granteth the reversion to another in fee, and the tenant for life attorne, &c. and after the grantee of the reversion die without heir, now the same reversion commeth to the lord by way of escheate. If in this case the tenant for life dieth, and the lord by force of his escheate enter in the life of tenant in taille, and after the tenant in taille dieth, it seemeth in this case that this is no discontinuance to the issue in taille, nor to him in the remainder, but that he may well enter, because the lord is in by way of escheate, and not by the tenant in taille. But otherwise it should bee, if the reversion had beene executed in the grantee, in the life of tenant in taille, for then had the grantee been in the tenements by the tenant in taille, &c.

THE reason of this case is here rendred (as before it was in this Chapter), that albeit the reversion be executed in the lord by escheate in the life of tenant in taille, yet because he is not in by the tenant in taille but by escheate, it worketh no discontinuance.

\[...\]

\[...\]
But if it had beene executed in the life of tenant in taile in the grantee which was in by tenant in taile, then the lord by escheat should have taken advantage of it. But of this sufficient hath beene said before in this Chapter.

ITEM, si un parson d’un esglise ou un vicar d’un esglise, alien certaine terres ou tenements parcel de son glebe, &c. a un auter en fee, et morust, ou resigne, &c. son successor poit bien enter, nient contristant tiel alienation, come est dit en un Nota 2 H. 4. Terme Mich. quod sic inoicpit.

ALSO, if a parson of a church or vicar of a church alien certaine lands or tenements parell 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.

NOTA quod dictum fuit pro lege, in a writ of account brought by a master of a college against a chaplainne, 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 successor may well enter, notwithstanding such alienation, &c.

FOR a bishop may have a writ of right of the tenements of the right of his church, for that the right is in his chaptier, and the fee simple abideth

CAR un exequve poit aver breve de droit de tenements de droit de son esglise, pur cee que le droit est en son chapier, et le fee simple demurrant en

vest un chapilene—d’un chapel, L. and M. and Roh.

† et ne, L. and M. and Roh.

† tenements de droit de son esglise, pur cue que le droit est en son chapier, et ies—not in L. and M. nor Roh.
en lay et en son chapiter. Et un deane poit aver breve de droit, pur ceco que le droit demurt en lay. Et un abbé poit aver breve de droit, pur ceco que le droit demurt en lay et en son corent. Et un master d'un hospital poit aver breve de droit, pur ceco que le droit demurt en lay et en son corent. Et un parson ou un vicar ne poit aver breve de droit, &c.

"PARCEL de son glebe, &c." In whom the fee simple of the glebe is, is a question in our books. [a] [341.2.]

Some hold that it is in the patron; but that cannot be for two reasons. First, for that in the beginning the land was given to the parson and his successors, and the patron is no successor. Secondly, the words of the writ of juris utrim be, si sit libera eleemosyna ecclesie de D. and not of the patron. Some others doe hold that the fee simple is in the patron and ordinary; but this cannot be, for the causes above said: and therefore, of necessity, the fee simple is in abeyance, as Littleton saith. And this was provided by the providence and wisdom of the law; for that the parson and vicar have curam animarum, and were bound to celebrate divine service, and administer the sacraments; and therefore no act of the predecessor should make a discontinuance to take away the entry of the successor, and to drive him to a real act, whereby he should be destitute of maintenance in the mean time. Upon consideration of all our books I observe this diversitie: that a parson or vicar, for the benefit of the church and of his successor, is in some cases esteemed in law to have a fee simple qualified; but to doe any thing to the prejudice of his successor in many cases, the law adjudge him to have in effect but an estate for life. Causa ecclesie publicis causis aquifarantur: et Summa ratio est que pro religione facit. Et Ecclesia fungitur vice minoris, meliorem facere hotest conditionem suam, detereor necquaquam.

As a parson, vicar, archdeacon, prebend, chantery priest, and the like, may have an action of waste, and in the writ it shall be said, ad exhorationem ecclesie, &c. ipius B. or prebenda ipius A.

And the parson, &c. that maketh a lease for life, shall have a consimili caso during the life of the lessee, and a writ of entrie ad communem legem after his death, or a writ ad [341. b.] terminum qui praterit, or a quod permittat in the debet, and none can maintain any of these writs, but a tenant in fee simple or fee tayle.

And a parson, &c. may receive homage, which tenant for life cannot doe. Temps E. i. Incumbent 19.

[c] Likewise a parson, &c. shall have a writ of mesne, and a contra formam seffamenti. But
Of Discontinuance.

But a parson cannot make a discontinuance, as Littleton here teacheth; for that should be to the prejudice of his successor to take away his entrie, and to drive him to a real action!

Also if a parson, &c. make a lease for yeares, reserving a rent, and 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 real action a parson, vicar, archdeacon, prebend, &c. shall have aid of the patron and ordinarie, as tenant for life shall have. So as it is evident, 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 ever had; for, as it hath beene said, Omnium privatio prae supponit habitum. And for the same cause he cannot have a writ of right right, nor a writ of right in its nature; as a writ of right sur disclaimer of customes and services, ne in justè vexes, rationabilités divisie, quo iure, and the like.

But here it appeareth by Littleton, that such bodies politic or corporate as have a sole seisin, and may have a writ of right, for that the fee and right is in them (albeit they cannot absolutely convey away their lands, &c. without assent of others), may make a discontinuance; as a bishop, an abbot, a deane, a master of an hospital, and the like. But this is to bee understood where a deane or a master of an hospital, &c. are soley 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 seisin.

And these that have the fee and right in them shall not have aid in respect of their high and large estate, albeit any of them be presentable: but a deane that is collative shall have aid of the king.

And it is to be observed, that the remedie is ever agreeable to the right: and therefore the bishop, deane, master of an hospital, that hath college and common seale, or the like, shall have a writ of right right, which is the highest remedie, for that they have the highest estate.

Here Littleton citeth the booke case, Mich. 2 H. 4. as an autioritie whereupon he groundeth his opinion. And it is to be observed, that the yeares of H. 4. were published before Littleton did write.

[342. a-] Vide Sect. 637.

Lib. 1. fol. 46.
Lib. 4. fol. 70.
Lib. 6. fol. 37.
Lib. 7. fol. 3.
Lib. 11. fol. 67.
Lib. 4. fol. 90.
Lib. 6. fol. 37.
Lib. 2. fol. 3.
Lib. 1. fol. 10.
Lib. 4. fol. 80.
Lib. 6. fol. 90.
Lib. 2. fol. 3.

But
But where Littleton, in this and other Sections, makes mention of masters of hospitals, the reader must know, that since Littleton wrote, there hath been a great alteration made by divers acts of parliament concerning hospitals.

"Master del hospitaill." These points concerning hospitals were resolved [c] by the justices.

First, that no hospital was given to the crowne by the statute of 27 H. 8. nor any hospital is within the statute of 31 H. 8. of monasteries, but only religious and ecclesiastical hospitals, and that no lay hospital was within those statutes.

Secondly, if upon the foundation of any lay hospital, or after it was ordained, that one or divers priests should be maintained within the hospital to celebrate divine service to the poor, and to pray for the soul of the founder, and all christian soules, or the like; and that the poor of such hospital should make the like orisons, yet such a hospital is not within the said statutes; for the hospital is lay, and not religious; and all or the most part of antient lay hospitals were founded or ordained after the like sort; and the makers of those statutes never intended to overthowe workes of charite, but to take away the abuse.

Thirdly, that no hospital was given to the king by the statute of 37 H. 8. but in two cases, where the donors, founders or patrons, &c. had entred and expelled the priests, wardens, &c. betwene the fourth day of Februarie, Anno 27 H. 8. and the five and twentieth of December, Anno 37 H. 8. or where king Henry the eighth, by commision according to that act, should enter and seise the same; but that determined by the death of that king.

Fourthly, that the statute of 1 E. 6. extended not to any hospital whatsoever, either lay or religious, as by the same appeareth.

And I was of counsell with the lord Cheney in this case, which, seeing it may doe good for maintenance of charitable uses, I thought good summarily to report it. To this I will addde, Panis pauperem vita pauperum; qui defraudat eos vir sanguinis est.

Nota. Of hospitals, some are corporations aggregate of many; as of master or warden, &c. and his conferres; some, where the master or warden hath only the estate of inheritance in him, and the brethren or sisters power to consent, having college and common scale; some, where the master or warden hath the state in him, but hath no college and common scale; and such a master or warden shall have a juris utrimum: and of these hospitals some bee eligible, some donative, and some presentable.

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**Sect. 646.**

Mes le plus haut briefe que ils point aver est le briefe de juris utrimum, le quel est grand preoste que le droit de fee n'est en eux, ne en null auters, &c. Mes le droit de fee simple est en abeicance, &c. cee est a dire, que il est tantolement en le remembrance, entendement et consideration de la ley, &c.

But the highest writ that they can have is the writ of juris utrimum, 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 abeicance, that is to say, that it is only in the remembrance, intendment and consideration
Lib. 3. Of Discontinuance. Sect. 647.

[342. b.] * &c. Car moy semble que tiel chose et tiel droict que it dit en divers livreres est en abeyance, est a tant a dire en Latyn (scilicet), Taliis res, vel tale rectum, qui vel quod non est in homine, adunce superstitie, sed tantummodo est, et consistit in consideratione et intelligentia legis, et quod alii dixerunt, talem rem aut tale rectum fore in nubibus. Mes jeo suppose que ils intendront per ceux paroles, in nubibus, &c. come jeo aye dit advenant. §

"EN abiance." (1) That is, in expectation, of the French word bayer, to expect. For when a parson dieth, we say that the freehold is in abeyance, because a successor is in expectation to take it; and here note the necessity of the true interpretation of words. If tenant pur terme d' autre vie dieth, the freehold is said to be in abeyance until the occupant enthr. If a man make a lease for life, the remainder to the right heirs of L. S. the fee simple is in abeyance until L. S. dieth. And so in the case of the parson, the fee and right is in abiance, that is, in expectation, in remembrance, entendment, or consideration of law. In considerationes feve intelligentia legis, because it is not in any man then living; and the right that is in abiance is said to be in nubibus, in the clouds, and therein hath a qualitie of fame wereof the poet speaketh:

Ingrediturque solo, et captut inter nubila condit.

Virg. A. Novil.

Sect. 647.

ITEM, si un parson d'un eglise devie, ore le francktement del glebe del parsonage est en nuluy durant le temps que le parsonage est voide, mes en abiance; c'estascavoir, in consideration et en le intelligence de le ley, tuncque un auter soit fait parson de meme l'eglise: et immediatquant un auter est fait parson, le francktement 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 abiance, viz. in consideration and in the understanding of the law, until another be made parson of the same church; and immediately when another is made parson, the freehold in deed is in him as successor.

* Us. not in L. and M. nor Roh.
† &c. added L. and M. and Roh.
‡ &c. added L. and M. and Roh.
§ Mes jeo suppose que ils intendront par ceux paroles, in nubibus, &c. not in L. and M. nor Roh.
¶ &c. added L. and M. and Roh.

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(1) [See note 298]
Of Discontinuance.

"Si un parson d' un esglise devie, &c." So it is of a bishop, abbot, dean, archdeacon, prebend, vicar, and of every other sole corporation or body politike, presentative, elective, or donative, which inheritances put in abeiance are by some called hereditates jacentes; and some say, que le fece est en balaunce.

ITEM, ascensus peradventure voilient arguer et dire, que entant que un parson ore l' assent del patron et ordinarie, poit granter un rent charge hors del glebe del parsonage en fee, et issint charger le glebe del parsonage perpetuam, ergo ils ont fee simple, ou deux ou un de eux auroit fee simple * at meims*. A ceo poit estre response, que il est principale en le ley, que de chescuns terres il y ad fee simple, &c. en ascen hom, ou auterment le fee simple est en abeyance ||. Et un auter principal est, que chescun terre de fee simple poit estre charge de un rentcharge en fee per un voy ou per auter. Et quant tial rent est grant per il fuit le parson, et le patron, et l'ordinarie, &c. en fee, nul avera prejudice ou parte per force de tial grant forsque les § grant lors en leur vies, et les heires le patron, et les successors del ordinarie apres leur decease. Et apres tial charge, si le ** parson devie, son successor ne poit rener a le dit esglise de 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 covient que le successor soy teigne content, et agree de ceo que son patron et l'ordinaria loyantel fetsoyent advenant, &c. Mes ceo n'est profo que le fee simple, &c. est en le patron et l' ordinaria, ou en ascen de eux, &c. Mes la cause que tial grant de rent-charge || est bone,

ALSO, some peradventure wil argue 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 have a fee simple, or two or one of them have a fee simple at the least. To this may bee answered, that it is a principle in law, that of everie land there is a fee simple, &c. in some bodie, or otherwise the fee simple is in abeyance. And there is another principle, that every land of fee simple may be charged with a rent charge in fee by one way or other. And when such rent is granted by the deed of the parson, and the patron, and ordinary, &c. in fee, none shall have prejudice or loss by force of such grant, but the grantors in their lives, and the heires of the patron, and the successors of the ordinaries after their decease. And after such charge if the parson die, his successor cannot come to the said church to be parson of the same by the law, but by the presentment of the patron, and admission and institution of the ordinaries. And for this cause the successor ought to hold himselfe content, and agree to that which his patron and the ordinaries have lawfully done before, &c. But this is no profe that the fee simple, &c.

* al—on, L. and M. and Rob.
† &c added L. and M. and Rob.
‡ auterment not in L. and M. nor Rob.
§ added L. and M. and Rob.
** patron not in L. and M. nor Rob.
†† &c. added L. and M. and Rob.
§ § &c. added L. and M. and Rob.
Of Discontinuance.

Sect. 643.

bone, est, pur ece que ceux queux av- 
rent interest, &c. en la dil esglise, sci- 
llicit le patron solonque la ley tem- 
poral, et l'ordinarie solonque la ley 
spiritual, furent assenius, ou parties 
a tiel charge, &c. Et ece semble estr 
e la verie cause que tiel glebe poit estre 
charge en perpetuitie, || &c.

&c. And this seemeth to be the true cause why such glebe may be 
charged in perpetuitie, &c.

"I'or un principle en la ley, &c." Principiun, quod est quasi 
primum caput, from which many cases have their originall or 
beginning, which is so strong, as it suffereth no contradiction; 
and therefore it is said in our books, that ancient principles of the 
law [2] ought not to be disputed, Contra negantem princi- 
phia non est 
disputandum. That which our author here calleth a principle, 
Sect. 3 & 90. he calleth a maxime.

Here Littleton in answer to an objection allegeth two principles. 
First,

"Que de chescun terre il y ad see simple, &c." This is hersoficue 
verum, and needeth no explanation. Secondly,

"Chescun terre de see simple poet estre charge en see per un vou ou 
"auter." Hereby it appeareth, that albeit the right of the fee sim- 
ple be in abeyance, yet it may be charged by one way or another.
And so it may be aliened in see, albeit the right of the fee be 
in abeyance, or in consideration of law. And herein is a diversite 
worthy the observation to be made, that when the right of fee sim-
ple is perpetually by judgment of law in abeyance, without any 
extpectation to come in case, there he that hath the qualified fee, 
concurrentibus his que in jurce requi- 
untur, may charge or alien it, as 
in the case of parson, vicar, prebend, &c. But where the fee sim-
ple is in abeyance, and by possibilite may every hour come in case, 
there the fee simple cannot be charged untiit it cometh in case. (1) 
Asif a lease for life be made, the remainder to the right heirs of 
I. S. the fee simple cannot be charged till I. S. be dead.

[343. b.] And so is Littleton to be understood, viz. that either 
it may be charged in presenti, or in futuro.

"Chescun terre de see simple." And so it is of lands entailed, 
for it may be charged in fee also; for the estate taile may be 
cut off by fine or recovery. Also the estate taile may continue, 
and yet tenant in taile may lawfully charge the land and bine the 
issue in taile. As if a disseisin 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 heirs, pro-
portional to the value of his right, this shall bine the issue in 
taile. Vide Sect. 1. Bridgewater's; which lands, by the rule 
of 

&c. not in L. and M. nor Rob.

(1) On the question, whether the fee 
simple, during the suspense of a contingent 
remainder, remains in the grantor, or is in 
abeyance, see Mr. Fearne's Essay on Contin-
gent Remainders, 3d ed. 275.
of Littleton, may be charged; and therefore if the owner of those thirteen acres grant a rent-charge out of those thirteen acres generally, lying in the meadow of eightie, without mentioning where they lie particularly; there, as the state in the land removes, the charge shall remove also. But since our author wrote, all ecclesiastical persons are disabled to charge in fee any of their ecclesiastical call possessions, as before hath been spoken of at large.

"Et quant tiel rent est grant, &c." This is an excellent interpretation and limitation of the said principle, viz. that none shall have prejudice or losse by any such grant, but such as are partie or privie thereunto; as the patron and his heires, the ordinary and his successors, and the patron and his successors; which successors of the parson are to be presented by the patron or his heires, and admitted and instituted by the ordinary or his successors. The like is to be said of an archdeacon, prebend, vicar, chaunterie priest, and the like.

"Per le fait le parson, et patron, et l'ordinarie, &c." Yet if the parson die, and in time of vacation the patron, of the assent of the ordinary, or the patron and ordinary grant an annuitie or rent-charge out of the glebe, this shall (as hath beene said) binde the succeeding Parsons for ever.

If there be parson, patron, and ordinary, and the parson by the ordinance and assent of the ordinary grant an annuitie to another, having quod pro quo in consideration thereof, this shall binde the successor of the parson, without the consent of the patron.

A church parochiall may be donative and exempt from all ordinary jurisdiction, 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 appointed by him. And by Littleton’s rule, the patron and incumbent may charge the glebe; and albeit it be donative by a layman, yet mere laicus is not capable of it, but an able clerk infra sacros ordines; for albeit hee come in by lay donation, and not by admission or institution, yet his function is spiritual; and if such a clerk donative be disturbed, the patron shall have a quare impremit of this church donative, and the writ shall say, quod permittat ipsum presentare ad ecclesiam, &c. and declare the special matter in his declaration. And so it is of a prebend, chantery, chappell, donative, and the like; and no laps shall incurrre to the ordinary, except it be so specially provided in the foundation. But if the patron of such a church, chantery, chappell, &c. donative, doth once present to the ordinarie, and his clerk is admitted and instituted, it is now become presentable, and never shall be donative after, and then laps shall incurrre to the ordinary, as it shall of other benefices presentable. But a presentation to such a donative by a stranger, and admission and institution thereupon, is meerely void. And all this was resolved by the whole court of king’s bench, for the rectorie parochiall donative of Saint Burian in the countie of Cornwalle.

It appeareth by our booke, and by divers acts of parliament, that at the first all the bishopricks in England were of the king’s foundation, and donative per traditionem baculi, (id est) the crozier, which was the pastoral staffe, & annuit, the ring whereby hee was married to the church. And king Henry the first being requested
by the bishop of Rome to make them elective, refused it: but
king John by his charter bearing date quinto Juni anno decimo septi-
timo, granted that the bishopricks should be eligible. If the king
doth found a church, hospital, or free chappell donative, he may
exempt the same from ordinarie jurisdiction, and then his chancel-
lor shall visit the same. Nay, if the king doe found the same
without any speciall exemption, the ordinarie is not, but the king’s
chancellor, to visit the same. Now as the king may create dona-
tives exempt from the visitation of the ordinarie, so he may by his
charter licence any subject to found such a church or chappell,
and to ordaine that it shall be donative, and not presentable, and
to be visited by the founder, and not by the ordinarie. And thus be-
game donatives in England, whereof common persons were patrons.

"Ordinarie." Ordinarius is hee that hath ordinarie jurisdiction
in causes ecclesiastical, immediate to the king and his courts of
common law, for the better execution of justice, as the bishop or
any other that hath exempt and immediate jurisdiction in causes
ecclesiastical.

"Ley temporel." Which consisteth of three parts, viz. First, on
the common law, expressed in our booke of law, and judicall rec-
ords. Secondly, on statutes contained in acts and records of par-
liament. And thirdly, on customs grounded upon reason, and used
time out of minde; and the construction and determination of these
doe belong to the judges of the realme.

"Ley spiritual, &c." That is, the ecclesiastical lawes allowed
by the lawes of this realme, viz. which are not against the common
law (whereof the king’s prerogative is a prismill part) nor against
the statutes and customs of the realme: and regularly according to
such ecclesiastical lawes, the ordinarie and other ecclesiastical
judges doe proceed in causes within their consuance. And this ju-
risdiction was so bounded by the ancient common lawes of the
realme, and so declared by act of parliament.

"Admission & institution." In proprie of speech, admission is,
when the bishop upon examination admitteth him to be able, and
saith, Admitto te habilem. [d] Institution is, when the bishop saith,
Instituo te rectorem talis ecclesie cum curd animarum, & accipe cu-
ram tuam & meam. [e] But sometimes in a more large sense, admision
doth include institution also: cujus presentatus sit admissionus, (i. e.)
institus. And it is to be observed, that institution is a good plenar-
tie against a common person (but not against the king, unless he be
inducted); and that is the cause that regularly plenaricty shall be
tried by the bishop, because the church is full by institution, which
is a spirituall act; but void or not void shall be tried by the com-
mon law.

At the common law, if an estranger had presented his clerk,
and he had beene admitted and instiutued to a church, whereof any
subject had beene lawfull patron, the patron had no other remedy
_to recover his advowson, but a writ of right of advowson, wherein
the incumbent was not to be removed: and so it was at the
common law, if an usurpation had beene had upon an infant or
or some covert, having an adversum by discretion, or upon request for life, &c., the infant's covert, and he in the reverse were driven to their writ of right of adversum; for at the common law, if the church were once full, the incumbent could not be removed, and plenaric generally was a good plea in a quare imperit, or assise of darreine presentment; and the reason of which was, to the intent that the incumbent might quietly intend and apply himself to his spiritual charge. And secondly, the law intended, that the bishop that had care of souls within his diocese, would admit and institute an able man for the discharge of his duty and his own; and that the bishop would doe right to every patron within his diocese. But at the common law, if any had usurped upon the king, and his presentee had beene admitted, instituted, and inflicted, (for without induction the church had not beene full against the king,) the king might have removed them by quare imperit, and beene restored to his presentation; for therein he hath a prerogative, quod medium tempus occurrit regi; but he could not present, for the plenaric barred him of that: neither could he remove him any way but by action, to the end the church might be the more quiet in the mean time. [*] Neither did the king recover damages in his quare imperit at the common law. But the said statute [a] hath altered the common law in the cases aforesaid; as namely, Quod loco, quod si para rea accipiat de plenitudine eccles s se per suam proprioiam presentationem, non propter illam plenitudinem remaneat soporque, dummodo breve infra tempus semestri imperituri, &c., and also hath provided remedy in the other cases, as by the said act appeareth.

[g] And if the king doe present to a church, and his clerke is admitted and instituted, yet before induction the king may repeal and revoke his presentation. But regularly no man can be put out of possession of his advowson but by admission and institution upon an usurpation by a presentation to a church, cum aliqua ius presentandi non habens presentaverit, &c. and not by collation of the bishop: [A] 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 only provisionally made for celebration of divine service until the patron doe present; and therefore he is not driven to his quare imperit, or assise of darreine presentment, in that case; but an usurpation by collation shall take away the right of collation that is in another. (1)

It is to be observed, that an usurpation upon a presentation shall 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 removed in quare imperit, or assise of darreine presentment, if there be not a plenaric by six moneths before the testis of the writ; but then the incumbent must be named in the writ, or else he shall never be removed; yet at the common law, if the ordinary 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 have his quare imperit, or assise de darreine presentment; and if the church were not full, have 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 recovered no damages.

(1) V. stat. 7 Ann. c. 18.
At the common law, if hanging the quare impedit against the ordinary for refusing of his clercke, and before the church were full, the patron brought a quare impedit against the bishop, and hanging the suit, the bishop admit and institute a clercke at the presentation of another, in this case if judgement be given for the patron against the bishop, the patron shall have a writ to the bishop; and remove the incumbent that came in pendente lite by usurpation, for pendente lite nihil innovetur, 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 observed, that albeit the clercke that comes in pendente lite, by usurpation, shall be removed; yet if the rightfull patron, being a stranger to the writ, present pendente lite, and his clercke is admitted and instituted, he shall not be removed; for else by the bringing of such quare impedit against the ordinary, the rightfull patron might be defeated of his presentation: and therefore ever after the statute of Wastm. 2. amongst other things it was enquired ex officio, if the church were full, and of whose presentation, &c. and if the plaintiff should have a writ to the bishop, and his clercke admitted, (as in most cases hee ought) yet may the rightfull incumbent have his remedie by law.

And as it was good policie (as hath beene said) 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 devolved to the metropolitian, shall not he present by laps, because he is not named? To this it is answered, that he shall not in that case present by laps; for the metropolitian shall never present or collate by laps after six moneths, but when the immediate ordinary might have collated by laps within the six moneths, and had surcease his time. And so it is if the time be devolved to the king for the first step or beginning failleth;

[345 a.] and in humane things, Quod non habet principium, non habet finem. And all these points were resolved [*] in a writ of error brought by Richard bishop of London and John Lancaster against Anthony Lowe upon a judgement given against them in a quare impedit in the common-place for the church of Winbieshe. But now let us heare what our author will say unto us.

ITEM, si tenant en taile ad issue et soit discesie, et puis il releu sa per son fait tout son droit a le disceoir: en est case nul droit de taile poit entre en le tenant en taile, pur ece que il droit releu tout son droit. Et nul droit poit entre en l'issue en le taile durant le vie son pere. Et tiel droit del inheritance en le taile n'est pas tout ousterment

ALSO, if tenant in tayle hath issue and is diseised, and after he releaseth by his deed all his right to the disceoir: in this case no right of taile can be in the tenant in taile, because hee hath releas all his right. And no right can be in the issue in taile during the life of his father. And such right of the inheritance
surerment expire per force de tiet releas, &c. Ergo, il credit que tiel droit demurt en abeinance, ut supra, durant la vie le tenant en taille que releasa, &c. et apres son decease donque est tiel droit maintenant en son issue en fait, &c.

Inheritance in the tail is not altogether expired by force of such release, &c. Ergo, it must needs be that such right remaine in abeinance, ut supra, during the life of tenant in tail releaseth, &c. and after his decease such right presently is in his issue in deed, &c.

Sect. 650.

In the same manner it is, where tenant in tail grant all his estate to another; in this case the grantee hath no estate but for term of life of the tenant in tail, and the reversion of the tail is not in the tenant in tail, 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 tail shall not have a writ of waste, for that no reversion is in him. But the reversion and inheritance of the tail, during the life of the tenant in tail, is in abeinance, that is to say, only in the remembrance, consideration, and intelligence of the law.

Littleton having declared where a fee is in abeinance, and where a freehold and fee is in abeinance by act in law, and where a fee that is in abeinance may be charged; here he puteth twocases where a right of an estate tail may be in abeinance by the act of the particie, which are so clear and evident, as there needs no further proof or argument, than Littleton hath justly and artificially made, albeit some objections of no weight have beene made against it. If tenant in tail of lands holden of the king be attainted of felonie, and the king after office seiseth the same, the estate taile is in abeinance, there said to be in suspense.

"Grant son estate, concedit statum suum." State or estate signifies such inheritance, freehold termes for yeares, tenancia by statute merchant, staple, et git, or the like, as any man 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 Littleton's case appeareth. Tenant for life, the remainder in taile, the remainder 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.

"Right,"

* &c. added L. and M. and Bob.  
† &c. added L. and M. and Bob.
OF Discontinuance.

"Right," jus, sicve rectum, (which Littleton often useth) signifies 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 jus descendit et non terra. But (Right) doth also include the estate in case in conveyances; 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.

And so commonly in fines, the right of the land inclosedeth and passeth the state of the land; as A. cognovit tenementa predicte case jus ipsius B. &c. And the statute [a] saith, jus suum defendere, (which is) statuum suum. And note that there is jus recuperandi, jus intrundi, jus habendi, jus retinendi, jus percipiendi, jus possidendi.

Title, properly, (as some say) is, when a man hath a lawful cause of entry into lands whereof another is seised, for the which hee can have no action, as title of condition, title of mortmaine, &c. But legally this word (Title) includeth a right also, as you shall perceive in many places in Littleton: and title is the more general word; for every right is a title, but every title is not such a right for which an action lieth; and therefore Titulus est justa causa possidendi quod nostrum est, and signifieth the means whereby a man commeth to land, as his title is by fine or by feoffment, &c. And when the plaintiff in assise maketh a title, the tenant may say, Veniam assisa super titulum; which is as much to say, as upon the title which the plaintiff hath made by that particular conveyance. Et dictur titulus a 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 Brooke's Abridgements in the title of Title.

"Interest." Interesse is vulgarly taken for a terme or chattle reall, and more particularly for a future tarmee; in which case it is said in pleading, that he is possessed de interesse termini. But ex vi termini, in legall understanding, it extenteth to estates, rights, and titles, that a man hath 'of, in, to, or out of lands; for he is truly said to have an interest in them: and by the grant of totum interesse suum in such lands, as well reversions as possessions in fee simple shall passe. And all these words singularly spoken are nomina collectiva; for by the grant of totum statuum suum in lands, all his estates therein passe. Et sic de ceteris.

"Ne unges avera breihe de waste, &c." So it is if tenant for life be, the remainder in taile, and he in the remainder release to the tenant for life, all his right and state in the land. Hereby it is said in our books, that the estate of the lessee is not enlarged, but the release serveth to this purpose, to put the estate taile into abeyance, so as after that he in the remainder cannot have an action of waste; yet if in that case (saving reformation) the lessee for life hath an estate for the life of tenant in taine expectant upon his owne life. But if tenant in fee release to his tenant for life all his right, yet he shall have an action of waste. And if tenant in taine make a lease for his owne life he shall have an action of waste.

Sec. 650.

(Plot. 484.)


PL Com. 6. fol. 374. in recogniz Zouch's case; & fol. 487 & 485 in Nielson's case.

ITEM, si un ecqueque alien terre que sont parcel de son ecquequey et decie, cec est un discontinuance a son successor, pur cec que il ne poit enter, mes est mis a son breve de ingressu sine assensu capituli.

ALSO, if a bishop alien lands which are parcell of his bishoprie 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 beene said (how the law standeth at this day) before in this Chapter.

ITEM, si un dean alien terre que aux il ad en droit de luy et son chapter, et morust, son successor poot enter. Mes si le dean est sole seise come en droit son deanry, donque son alienation est discontinuance a son successor, come est dit above.

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 deane, 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 Littleton's owne words are plaine and evident.

ITEM, peradventure ascuns voi- IoT, peradventure some will lont arguer et dire, que si un abbe argue and say, that if an abbot et son covenent sont seises en their desmesne come de fee de certaine terres a eux et a leur successors, &c. et l'abbe sans assent de son coven alien mesmes les terres a un auter et decie, cec est un discontinuance a son successor, &c.

ALSO, peradventure some will argue and say, that if an abbot and his covennent bee seised in their desmesne as of fee of certaine lands to them and to their successors, &c. and the abbot without the assent of his covennent the same lands to another and die, this is a discontinuance to his successor, &c.

* queux il ad en droit de luy et son chap- * Mes poit aver breve de ingressu sine ar-
ter—parcel de son deanrie, L. and M. and sennum episcopi et capituli, &c. added L. and M. Roh. and MSS.

† ne added L. and M. and Roh.

† Mes poit aver breve de ingressu sine as-

sennum episcopi et capituli, &c. added L. and M. and Roh. and MSS.
Sect. 654.

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, &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 diversitie betweene these two cases.

Sect. 655.

For when an abbot and the covent are seised, yet if they bee disseised, the abbot shall have an assise in his owne name, without naming the covent, &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 covent, it behoveth that such action reall be sued against the abbot only without naming the covent, because they are all dead persons in law, but the abbot who is the soveraigne, &c. And this is by reason of the soveraignty; for otherwise he should bee but as one of the other mouskes of the covent, &c.

Sect. 656.

But deane and chapter are not deadpersons in law, &c. For every of them may have an action by himselfe in divers cases. And of such lands or tenements as the deane and chapter

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* en—et le, L. and M. and Roh.
† dies added L. and M. and Roh.
‡ &c. added L. and M. and Roh.
§ &c. added L. and M. and Roh.
¶ un not in L. and M. nor Roh.
chapter have in common, &c. if they
bee disseised, the deane and chapter
shall have an assise, and not the
deane alone, &c. And if another
will have an action real 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 appeared a great diversitie
betweene the two cases, &c.

These are apparent, and need no explanation. Saving in the
655 Section mention is made of the precept quod reddat,
which in this place is intended of a real action whereby land is de-
dmanded, and is so called of the words in every such writ.

And the reason of this diversitie betweene the case of the abbot
and covent, and deane and chapter is, for that (as hath beene said)
the monkes are regular, and civilly dead, and the chapter are sec-
cular, and persons able and capable in law. But by the policie of
law the abbot himselfe (here termed the sovereigne) albeit he be
a monke and regular, yet hath he capacitie and abilitie to sue and
be sued, to enceffe, give, demise, and lease to others, and to pur-
chase and take from others; for otherwise they which right have
should not have their lawfull remedie, nor the house remedie
against any other that did them wrong: neither could the house
without such capacitie and abilitie stand. And the covent have no
other abilitie or capacitie, but only to assent to estates made to the
abbot, and to estates made by him, which for necessitie’s sake,
though they be civilly dead, they may doe.

If the master d’un hospitall
discontinue certaine terre de son
hospitall, son successor ne poit enter,
mes est mis a son breve de ingressu
sine assensu confratrum et consor-
ororum, &c. Et tous tiels briefes plein-
ment appareront en le Register, &c.

This must also be understood where the master of the hospitall
bath sole and distinct possessions, and not where he and his
brethren are seised as a body politike aggregate of many. And here
Littleton (as divers time before) doth cite the Register.

* Ge. not in L. and M. nor Rob.
† consororum—sororum, L. and M. and Rob.

Sect. 657.
ITEM, si terre soit lese a un home
pur terme de sa vie, le remainder a
un auter en le taile, savant le rever-
sion al lessor, et puis celuy en le re-
mainder disseisit le tenant a terme de
vie, et fait un feoffment a un auter en
fee, et puis morust sans issue, et le te-
nant a terme de vie morust; it semble en cest cas, que celuy en le reversion bien puet enter sur le feoffee, pur ceco que celuy en le remainder que fist le
feoffment, ne fuit unque seise en le
taile per force de mesme le remainder, &c.

ALSO, if land be lett to a man
for term of his life, the remain-
der to another in taile, saving the
reversion to the lesser, and after he
in the remainder disseiseth the te-
nant for term of life, and maketh a
feoffment to another in fee, and af-
ter dyeth without issue, and the te-
nant for life dyeth; it seemeth in
this case, that hee in the reversion
may well enter upon the feoffee,
because he in the remainder which
made the feoffment, was never seised
in taile by force of the same remain-
der, &c.

HERE it appeareth, that albeit the feoffor hath an es-
tate taile in him expectant upon an estate for life, yet
his feoffment 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 understood, when he is seised of the freehold and in-
heritance of the estate in taile, and not where he is seised of a re-
mainder or a reversion expectant upon a freehold; which freehold
(as often hath beene said) is ever much respected in law.

Vid. Sect. 637.
592. 596. 607.
Col. 540. 641.
(10 Rep. 36.
1 Roll. Abr.
634.)
Of Remitter.

REMITTER is an antient term 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 adjudge him is by force of the elder title, because the elder title is the more sure and more worthie title. And then when a man is adjudged 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 tenant in tale discontinue the tale, and after bee disseiseth his discontinueu, and so dieth seised, whereby the tenements descend to his issue or cosine inheritable by force of the tale; in this case, this is to him to whom the tenements descend, who hath right by force of the tale a remitter to the tale, because the law shall put and adjudge him to bee in by force of the tale, which is his elder title: for if hee should bee in by force of the disseit, then the discontinueu might have a writ of entrie sur discein in the per against him, and should recover the tenements and his dammages, &c. But inasmuch as he is in his remitter by force of the tale, the title and interest of the discontinueu is quite taken away and defeated, &c. (1).

HERE our author having next before treated of a Discontinuance, very aptly beginneth this Chapter with a description of a Remitter.

"Remitter est un antient terme en la ley," and is derived of the Latine verbe remittere, which hath two significations; either, to restore and set up againe, or to cease. Therefore a remitter is an operation in law upon the meeting of an ancient right remediable, and a latter state in one person where there is no follic in him, whereby

* et sure not in L. and M. nor Roh.

† &c. not in L. and M. nor Roh.

(1) [See Note 300.]
whereby the ancient right is restored and set up againe, and the
new defeasible estate ceased and vanished away. And the reason
hereof is, for that the law preferreth a sure and constant right,
though it be little, before a great estate by wrong and defeasible;
and therefore the first and more ancient is the most sure and more
worthy title; *Quod prius est, verius est, & quod prius est tempore,*
postiu est jure: [a] therefore many booke in stead of remitter say,
that he is *en son primer estate, or en son melhor droit,* or *en son
meilior estate,* or the like. (1)

"Lou home ad deux titles." Here this word (Titles) is taken in
the largest sense, including rights: for being properly taken, [b] as
in case of a condition, mortmaine, assent to a ravisher, and
the like, there is no remitter wrought unto them, because
these are but bare titles of entrie, for the which no action is given;
but a remitter must be to a precedent right: and Littleton in this
Chapter puttheth all hiscases onely of remitters, to rights remediable.

"Et un alter title plus darrcre, &c." Here is to be observed,
that an estate must worke a remitter to an ancient right; for albeit
two rights doe descend, there can be no remitter, because one
right cannot worke a remitter to another: for regularly to every
remitter there be two incidents, viz. an ancient right and a de-
feasible estate of freehold comming together.

"Le plus eigne title est le plus sure title, et plusi digne title." So as the eldest titleis worthily (as hath beene said) preferred, be-
cause it is the more sure and more worthy.

"Sicome tenant en taile discontinue le taile, &c." Here our au-
thor, according to his accustomed manner, to illustrate his descrip-
tion putteth an example of a remitter, where the law preferreth
the ancient estate by right, before a new estate defeasible. And this
remitter is wrought by an estate cast upon the issue in taile by dis-
cent, which is an act in law, and the descent of the land in possession,
and the right of estate taile descend together.

"Est tout ousterment anient et defeat, &c." Here be two things
implied and to be understood: First, that this remitter is wrought
in this case by operation of law upon the freehold in law descended
without any entrie. Secondly, that the law so favoureth a remitter
(being a restoring to right), that if the discontinue be an infant
or a feme covert, and tenant in taile after a discontinuance
disseise them and die seised, the issue shall be remitted without any
respect of the privilege of infaneci or coverture; and therefore our
author said, *le title et interest le discontinue est tout ousterment
anient et defeat.*

"Dongues le discontinue, &c." Here is a reason added in this
particular case, that fitteth not other cases of remitter; for in this
case

(1) [Sec Note 399]
ITEM, if the tenant in taille en-
feoffa son fils en fee, ou son cosine
inheritable per force de le taile, le quel
fils ou cosin al temps de feoffament est
deins age, et puis le tenant en le taile
devia, et celuy a que le feoffament fuit
fait est son heyre per force de le taile;
ceo est un remitter al heire en le taile
a que le feoffament fuit fuit. Car co-
cent que durant la vie le tenant en le
taille que fist le feoffament, tiel heire
serra adjudge eis per force de le feoff-
ment, encoro apres la mort le tenant
en le taile, l'heire serra adjudge eis
per force de le taile, et nemy per
force de le feoffament. * Car coment
que tiel heire fuit de pleine age al
temps de le mort de le tenant en le
taile que fist le feoffament, ceco ne fait
aucun matter, si l'heire fuit deins age
al temps del feoffament fuit a tuy. Et
si tiel heire estant deins age al temps
de feoffament, vient al pleine age,
vivant le tenant en le taile que fist le
feoffament, et issint estant de pleine
age, il charge per son fait mesme la
terre ovo un common de pasture, ou
ore un rent charge, et puis le tenant
en le taile morust; ore il semble que
le terre est discharge del common, et
de le rent, par ceco que le heire est
cins de auter estate en la terre que il fuit
al temps de le charge fuit, entant que
il est en son remitter per force de le
taile, et issint l'estate que il avoit al
temps de le charge, est ousterment de-
beat, &c.

ALSO, if tenant in taille infeoff his sonne in fee, or his cosine
inheritable by force of the taille,
which sonne or cosine at the time
of the feoffment is within age, and
after the tenant in taille dieth, and
hee to whom the feoffment was
made is his heire by force of the
taille; this is a remitter to the heire
in taille to whom the feoffment was
made. For albeit that during the
life of the tenant in taille who made
the feoffment, such heire shall be
adjudged in by force of the feoff-
ment, yet after the death of tenant
in taille, the heire shall be adjudged
in by force of the taile, and not by
force of the feoffment. For altho'
such heire were of full age at the
time of the death of the tenant in
taille who made the feoffment, this
makes no matter, if the heire were
within age at the time of the feoff-
ment made unto him. And if such
heire beeing within age at the time
of such feoffment, commeth to full
age, living the tenant in taille that
made the feoffment, and so being of
full age he charges by his deed the
same land with a common of pasture,
or with a rent charge, and after the
tenant in taille dyeth; now it seem-
eth that the land is discharged of the
common, and of the rent, for that
the heire is in of another estate in
the land than he was at the time of
the charge made, in as much as hee
is in his remitter by force of the
taille, and so the estate which hee had at the time of the charge,
is utterly defeated, &c. (1)

* Car not in L. and M. nor Roh.
† &c. not in L. and M. nor Roh.

(1) [See Note 301.]
Of Remitter.

[348. b.] Our author having put one example where both the rights descend together, now puts another example, where the issue in tail claimeth by purchase in the life of tenant in tail, and the ancient right descendeth after to the same issue.

"Car coment que tiet heire fuit de pleine age al temps del mort, &c." The reason is, because no folie can be adjudged in the infant at the time of the acceptance of the feoffment. Therefore the law respecteth the time of the feoffment, and not the time of the death: and albeit he might have waived the estate which he had by the feoffment at his full age, yet here it appeareth, that the right of the estate taille descending to him either within age, or of full age, shall work a remitter in him; for that the waiver of the state should have beene to his losse and prejudice.

Since Littleton wrote, and after the statute of 27 H. 8. cap. 10. if tenant in tail make a feoffment in fee to the use of his issue being within age, and his heires, and dieth, and the right of the estate taille descend 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 use was limited: Et sic de similibus, so as there is a great change of remitters since Littleton wrote (1).

But if the issue in taille in that case waive the possession, and bring a formedon in the discender, and recover against the feoffees, he shall thereby bee remitted to the estate taille; otherwise the lands may be so incumbred, as the issue in taille should be at a great inconvenience: but if no formedon be brought, if that issue dieth, his issue shall be remitted; because a state in fee simple at the common law descendeth unto him.

[349. a.] "Estant de pleine age, il charge per son fuit, &c." The reason is, because the grantor had not any right of the estate in taille 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 wholly defeated. And the state of the land out of which the rent issued, being defeated, the rent is defeated also.

But if tenant in taille make a lease for life whereby he gaineth a new reversion in fee, so long as tenant for life liveth, and he granteth a rent-charge out of the reversion, and after tenant for life dieth, whereby the grantor becommeth tenant in taille againe, and the reversion in fee defeated; yet because the grantor had a right of the enaille in him, cloathed with a defeasible fee simple, the rent-charge remaineth good against him, but not against his issue; which diversitie is worthy of observation, for it openeth the reason of many cases.

If the heire apparent 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 writ of entrie doth descend unto him, and therefore he is remitted.

So

(1) The effect of this statute on the doctrine of Remitter is very fully explained in Duscombe v. Wingfield, Hrab. 254. See 2 Leot. 222, Sid. 63. Dyer, 361.

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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 same is remitted, and he shall
avoid the charge. So as where our author puttheth his example of
a fee taile, it holdeth also in case of a fee simple.

"Un common de pasture, ou un rent charge, &c." Here Lit-
tleton puttheth his case of things granted out of the land. But what
if the issue at full age by deed indentured or deed poll make a lease for
years of the land, and after by the death of tenant in tail he is
remitted, whether shall he avoid 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 plught than it is in the case of a grant
of a rent-charge, which I gather out of our author's owne words in
another place.

"La terre est discharge del rent, &c." Littleton doth add
these words materially, because the whole grant is not thereby
avoided, but the land discharged of the rent-charge; for the grantee
shall have notwithstanding a writ of annuitie, and charge the per-
son of the grantor.

Sect. 661.

ITEM, un principal cause pur que
tiel heire en les cases avanities, et
auters cases semblables, sera dit en
son remitter, est pur eco que il n'y ad
aucun person envers que il poie sur
son briefe de formeden. Car envers
luy same il ne poiet surer, et il ne poit
envers nul aiter, car nul aiter
est tenant del frankement; et pur
ce la say luy adjudge eins en
son remitter, scilicet, en tiel plite, si-
come il avoit loialment recever same
la terre envers un aiter, &c.

ALSO, a principal cause why
such heire in the cases afores-
said, and other like cases, shall be
said in his remitter, is for that there
is not any person against whom he
may sue his writ of formeden. For
against himselfe he cannot sue, and
hee cannot sue against any other,
for none other is tenant of the free-
hold; and for this cause the law
doeth adjudge him in his remitter,
scilicet, in such plite, as if hee had
lawfully recovered the same land
against another, &c.

"UN principal cause fur que, &c." And of this opinion is
[d] Littleton in our bookes.

"Il n'ad aucun person envers que, &c. sicome il avoit loialment
"recover same la terre vers un aiter, &c." Here it is to be un-
derstood, that regularly a man shall not be remitted to a
right remedliesse, for the which he can have no action; [349, b.
] for Littleton here saith, that there is no person against whom the
issue when he commeth to the land without folly may bring his ac-
tion; and saith also, that this is the principal 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 tail suffer a common recovery in
which there is error, and after tenant in tail disseiseth the recoveror and
dieth,
Lib. 3. Of Remitter. Sect. 662.

dieth, here the issue in taile hath an action, viz. a writ of error; but as long as the recoverie remaineth in force, he hath no right, and therefore in that case there is no remitter. (1)

If B. purchase an advowson, and suffereth an usurpation and six moneths to passe, and after the usurper granted the advowson to B. and his heires, B. dieth, his heire is not remitted, because his right to the advowson, was remediless, viz. a right without an action. (2)

Tenant in taile of a mannor whereunto an advowson is appen- dant maketh a discontinuance, the discontinueree granteth the advow- son to tenant in taile and his heires, tenant in taile dieth, the issue is not remitted to the advowson, because the issue had no action to recover the advowson before he recovered the mannor whereunto the advowson was appendant. And so it is of all other inheritances regardant, appendant, or appurtenant; a man shall never be remitted to any of them before he recontinned the mannor, &c. whereunto they are regardant, appendant, or belonging.

Car nul ne poost claimer droit en les apphurtenances ne en les acces- sories que nul droit ad en le principall.

[e] Item, excipi postest, &c. quamvis jus habeat in tenemento et pertinentia, primâ recuperare debei tenementum ad quod pertinent advocato, et tunc postea presentet et non ante, et de hac materia in Rotulo de termino Sancti Michaelis, anno regis Henrici tertio in comitatu Norff. de Thomâ Bardolfle.

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 severed by the discontinueree, or other wrong doer. And therefore if tenant in taile be of a mannor whereunto an advowson is appendant, and infeoffeth A. of the mannor with the appurtenances, A. as infeoffeth the tenant in taile, saving to himselfe the advow- son, tenant in taile dieth; his issue being remitted to the mannor, is consequently remitted to the advowson, although at that time it was severed from the mannor. So it is in the same case if tenant in taile had beene disseised, and the disseisor suffer an usurpation, if the disseisee enter into the mannor, he is also remitted to the ad- vowson.

Sect. 662.

ITEM, si terre soit taile a un home et a sa femme, et a les heires de leur deux corps engendres les gapex ont issue fille, et le femme devy, et le baron pret a ouer femme, et ad issue un autre fille, et discontinua le taile, et puis disseise le discontinuere et issint [350. a.] morust esse, orle terre dis- cendera a les deux fille.* Et en

ALSO, if land be entailed to a man and to his wife, and to the heires of their two bodies begotten, who have 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 disseith the discontinueree and so die seised, now the land shall

*Es not in L. and M. nor Rob.

(1) [See Note 366.]
(2) This seems to be altered by the afore-mentioned statute of 7. Ann. c. 18. Note to the 11th edition.
en est cas quant al eigne filé, que est inheritable per force de le tayle, cee 
† n'est un remitter forique de le moïty. 
Et quant al auter moïty, et est mis a 
suer son action de formédon envers sa 
socer. Car en est cas les deux soers 
ne sont pas tenants en parcellary, mas 
sont tenants en common, pur cee que 
ils sont cins per divers titles. Car l'un 
socer est cins en son remitter per force 
de le tayle, quant a cee que a may 
affiert ; et l'autre socer est cins quant a 
cee que a may affiert en fée simple per 
de disent son père, † &c.

CEO n'est remitter forique pur le moïty, &c.” Here Littleton 
putteth a case where the issue in taile shall be remitted to a 
moïty, because but a moïty of the land descended unto her, and 
there cannot be any remitter, but for so much as commeth to the 
issue by disent, or by any other means without his folly ; and in 
this case by act in law the coparcenary is defeated, for the daughters 
are in by several titles, viz. the eldest daughter is tenant in taile 
per formam doni, by the remitter of the one moïty; and the young-
est seised in fée simple by disent of the other moïty, against whom 
the other sister in taile may have her formédon. (1)

EN mesme le manner est, si tenant 
en taile enfeoffa son heire appa-
rant en le taile (estant l'heire deins 
age), et un auter jointenant en fée, et 
le tenant en taile morust ; ore l'heire 
en taile est en son remitter quant a 
l'un moïty, et quant a l'autre moïty 
it est mis a son briefe de formédon, 
† &c. 

(3 Roll. Abr. 41.)

Le heire, &c. est en son remitter quant a l'un moïty, &c.”
Hereby it appeareth that albeit joyntenants be seised pro 
individuo per my et per tout, yet each of them hath in judgement of 
law but a right to a moïty; and therefore the issue in taile in this 
case is remitted but to a moïty, and is tenant in common but with 
the other feoffee. And so it is if the discontinue, after the death of 
tenant in taile, make a charter of feoffment to the issue in taile, 
being

† n'est—est, L. and M. and Roh. 
† &c. not in L. and M. nor Roh.

L &c. not in L. and M. nor Roh.

(1) [See Note 363.]
being within age, who hath right, and to a stranger in fee, and make livery to the infant in name of both; the issue is not remitted to the whole, but to the halfe: for first he taketh the fee simple, and 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.

[350. b.]

Sect. 664.

\[ITEM, si tenant en taile enfeeoffa son heire apparant, l'heire estant de pleine age ai temps de feoffment, et puis le tenant en taile morusti; ceo nest remitter al heire, pur ceo que il fuit sa folly, que il estant de pleine age voile prendre tiel feoffment, &c. Mes tiel folly ne poit estre adjudge en l'heire estant deins age * at temps del feoffment, &c.\]

ALSO, if tenant in taile enfeeoffe 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 be adjudged in the heire being within age at the time of the feoffment, &c.

BY this feoffment, albeit the heire apparent hath some benefit in the life or his ancestor, yet is he thereby (besides his owne) subject 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 estent de pleine age voile prendre tiel feoffment, but folly shall not be judged in one within age in respect of his tender yeares, and want of experience.

Sect. 665.

ITEM, si tenant en taile enfeeoffa un feme en fee, et morusti, et son issue deins age prent mesme la feme † a feme; ceo est un remitter al enfant ‡ deins age, et la feme doneque n'ad rien, pur ceo que le baron et la feme sont forsque comme un person en ley. Et en cest cas le baron ne poit nuere brefe de formeved, sinon que il voitct nuere envers luy mesme, le quel serroit inconvenient; et pur cel cause la ley adjudgera l'heire en son remitter, pur ceo que nu folly poit estre ‡ adjudge en luy estant deins age al temps d'espoesels, &c. Et si l'heire soit en son

ALSO, if tenant in taile enfeeoffe 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 formadon, unlese he will sue against himselfe, which should be inconvenient; and for this cause the law adjudgeth the heire in his remitter, for that no folly can be adjudged in him being within age at the time of the espousels, &c.

* &c. added L. and M. and Rob.
† a feme not in L. and M. nor Rob
‡ deins age not in L. and M. nor Rob
‡ adjudge—awette, L. and M. and Rob.
son remitter per force de le taile, il 
consist per reason, que la feme n'ad 
riens, &c. Car entant que le baron 
et sa feme sont comme un person, la 
terre ne doit estre sere per moitites; 
et pur cecause le baron est en son re 
mitter de l'entierrie. Mes aouterment 
est si tiel heire fuit de pleine age al 
temp de les espousels, car donques le 
heire n'ad riens forisque en droit sa 
feme. &c. &c.

HHERE. Littleton putteth a case where the husband within age 
by the intermarriage may be remitted, albeit he gaineth but 
a freehold during the covereth en outre droit.

Also here is to bee observed, that the estate which doth in this 
case worke the remitter, could not have continuance after the de 
cease of the wife. And so on the other side, if the husband make a 
discontinuance, and take backe an estate to him and his wife, dur 
ging the life of the husband, this is a remitter to the wife presently, 
albeit the estate is not by the limitation to have continuance after the 
decease of the husband; which case is proved by the reason of the 
case which our author here putteth. And here our author observeth 
the diversity when the husband is within age, and when hee is of 
full age; for when he is within age, no folly can be adjudged in 
him,-as in this Chapter hath beeene often said.

Here is also to bee noted, that presently by the mar 
rriage within age, the husband is remitted, and the free-
[351. a.]
hold and inheritance of the wife banished cleane away.

"Prist mesme la feme at feme." Here it is good to be seen 
what things are given to the husband by marriage. (1) First, it 
appeareth here by Littleton, that if a man taketh to wife a woman 
seised in fee [*], he gaineth by the intermarriage an estate of free 
hold in her right, which estate is sufficient to worke a remitter, and 
yet the estate which the husband gaineth dependeth upon uncertain 
ty, and consisteth in privitie [*]; for if the wife be attainted of 
felony, the lord by escheat shall enter and put out the husband: 
otherwise it is if the felonie be committed after issue had. Also, if 
the husband be attainted of felonie, the king gaineth no freehold, but 
a pernancie of the profits during the covereth, and the freehold re 
maineth in the wife [*]. Secondly, if she 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 he be outlawed 
or attainted, they are gifts in law.

[*] Upon an execution against the husband for his debt, the 
sheriff may sell the terme during her life; but the husband can

&c. &c. not in L. and M. nor Rob.

(1) [See Note 304.]
make no disposition thereof by his last will. Also, if he make no disposition or forfeiture of it in his life, yet it is a gift in law unto him if he doe survive his wife; but if he make no disposition, and die before his wife, she shall have it againe. And the same law is of estates by statute merchant, statute staple, elegit, wardships, and other chattels reals in possession.

But if the husband charge the chattell reall of his wife, it shall not bind the wife if shee survive him.

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 surviveth, this right is not given to the husband by the intermarriage, but the executors or administrators of the wife shall have it; so it is if the wife hath but a possibilite.

In the same manner it is if the wife be possessed of chattels reals en 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 surviveth her. In the same manner if a woman grant a term to her owne use, taketh husband, and dieth, the husband surviving shall not have this trust, but the executors or administrators of the wife [f]; for it consisteth in privitie: and so hath it beene resolved by the justices. Chattells reals consisting meere in action the husband shall not have by the intermarriage, unless he recovereth them in the life of the wife, albeit he survive the wife; as a writ of right of ward, a valore maritagii, a forfeiture of marriage and the like, whereunto the wife was intituled before the marriage.

But chattels reals being of a mixt nature, viz. partly in possession, and partly in action, which happen during the coverture, the husband shall have by the intermarriage, if hee survive his wife, albeit he reduceth them not into possession in her life-time; but if the wife surviveth him she shall have them. As if the husband be seised of a rent service, charge, or seck, in the right of his wife, the rent become due during the coverture, the wife dieth, the husband shall have the aurreages; but if the wife survive the husband she shall have them, and not the executors of the husband. So it is of an advowson, if the church become voyd during the coverture [k] he may have a quare inpeditis in his owne name, as some hold: but the wife shall have it if she survive him; and the husband if he survive her: et sic de similibus.

[351. b.] But if the aurreages had become due, or the church had fallen voyd before the marriage, there they were meere in action before the marriage; and therefore the husband should not have them by the common law, although he survived her. And so it is of releefees, mutavitias mutandia. [l] But now by the statute of 32 H. 8. cap. 37, if the husband survive the wife, he shall have the aurreages as well incurred before the marriage, as after.

But the marriage is an absolute gift of all chattels personals in possession in her owne right, whether the husband survive the wife or no; but if they be in action, as debts by obligation, contract, or otherwise,
otherwise, the husband shall not have them unless he and his wife recover them. And of personal goods, en auter droict, as executrix or administratrix, &c. the marriage is no gift of them to the husband, although he survive his wife. (1)

[Note] If an estray happen within the maner of the wife, if the husband die before seizure, the wife shall have it, for that the property was not in the wife before seizure.

But as to personal goods, there is a diversitie worthy of observation betweene a property in personal goods (as is aforesaid) and a bare possession; for if personal goods be bailed to a feme, or if she finde goods, or if goods come to her hands as executrix to a bailiff, and taketh a husband, this bare possession is not given to the husband, but the action of detinue must be brought against the husband and wife.

But now let us heare Littleton.

"Le quel sera inconvenient." This argument ab inconvenienti, our author hath used in many places.

Sect. 666.

ITEM, si feme seisie de certaine terre en fee prent baron, le quel aliencia mesme la terre a un auter en fee, * l'aliencia lesa mesme la terre al baron et sa feme pur terme de lour deux vies, sauvant le reversion al lessor et a ses heires; en cest cas la feme est eius en son remitter, et est estise en fait en son desmesne comme de fee, sicemne elc fuit aduertant, pur cec que le repris del estate serra adjujge en ley le fait le baron, et nemy le fait la feme; issint nul foly poit estre adjujge en la feme, que est covert en tiel case. Et en cest case le lessor s'ad ad vient en le reversion, pur cec que la feme est seise en fee, &c.

ALSO, if a woman seised of certain 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 term of their two lives, saving the reversion to the lessor and to his heirs; in this case the wife is in her remitter, and she is seised in deed in her desmesne as of fee, as shee was before, because the taking backe of the estate shall be adjudged in law the fact of the husband, and not the fact of the wife; so no folly can be adjudged in the wife, which is covert in such case. And in this case the lessor hath nothing in the reversion, for that the wife is seised in fee, &c.

L'A feme est son remitter." By this it appeareth, that albeit there be no moitie betweene husband and wife, yet this is a remitter presently, and standeth not upon the survivor of the wife, as some have thought: for if the estate gained by intermarriage be a sufficient estate to worke a remitter; a fortiori, an estate made to the husband and wife shall worke a remitter in the wife. And so

* et added L. and M. and Rob.  
† &c. not in L. and M. nor Rob.  
‡ accurs added L. and M. and Rob.

(1) [See Note 305.]
so it is if tenant in tail, incapable 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 tail; though some have thought the contrary.

Here also it appeareth, that no folly in this case can be adjudged in a feme covert, for the taking backe of the estate shall be adjudged in law the act of the husband.

Note in the case of the feme covert, she may be remitted in the life of the discontinuor, because she hath a present right; but in the case of tenant in tail, the issue cannot be remitted in the life of the discontinuor, because the issue hath no right untill his decease.

**Sect. 667.**

**Mes in ecest case sit leessor sole.**

**Mes in ecest case sit leessor sole.**

**Pur cee que baron est esstoppe a dire, &c.**

"Estoppe" commeth of the French word *esstoppe*, from whence the English word stopped: and it is called an estoppel or conclusion, because a man's owne act or acceptance stoppeth or closeth up his mouth to allege or plead the truth: and Littleton's case here proveth this description.

Touching estoppels, which is an excellent and curious kind of learning, it is to be observed, that there are three kindes of estoppels, viz. by matter of record, by matter in writing, and by matter in pais.

[a] By matter of record, viz, by letters patents, fine, recoverie, pleading, taking of continuance, confession, imparlance, warrant of attorny, admittance.

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*que est not in L. and M. nor Roh.

† un—null, L. and M. and Roh.
[§] By matter in writing, as by deed indented, by making of an
acquaintance by deed indented or deed poll, [c] by defeasance by
deed indented or deed poll.

By matter in passus, as by livery, by entry, by acceptance of rent,
by partition, and by acceptance of an estate, as here in the case
that Littleton putteth; whereas Littleton maketh a speciall obser-
vation, that a man shall be esstopped by matter in the country,
without any writing. (1)

To make the reader more capable of the learning of estoppells,
these few rules, amongst others, are to be knowne.

[f] First, that every estoppel ought to be reciprocal, that is, to
binte both parties; and this is the reason, that regularly a stran-
gler shall neither take advantage, nor be bound by the estoppel:
[c] privies in blood, as the heir; privies in estate, as the feoffee,
tessee, &c.; privies in law, as the lords by escheat; tenant by the
curtesse, tenant in dower, the incumbent of a benefice, and others
that come under by act in law, or in the post, shall be bound
and take advantage of estoppells; and that a rebutter is a kinde of
estoppel.

[f] Secondly, that every estoppel, because it conclueth
a man to allege the truth, must be certain to every in-
tent, and not to be taken by argument or inference.

[g] Thirdly, every estoppel ought to be a precise affirmation
of that which maketh the estoppel, and not be spoken impersonally;
as if it be said, Ut dicitur, quia impersonalitas non conclusit, nec li-
gat: impersonals dicitur, quia sita persona. [a] Neither doth a
recital conclude, because it is no direct affirmation.

[h] Fourthly, a matter alleged that is neither traversable nor
materiall, shall not estoppe.

[k] Fifthly, regularly a man shall not be concluded by accept-
ance or the like, before the title accrued.

[l] Sixthly, estoppell against estoppell doth put the matter at
large.

[m] Seventhly, matters alleged by way of supposal in counts
shall not conclude after non-suit: otherwise it is after judgement
given; and after non-suit, albeit the supposal in the count shall
not conclude, yet the barre, title, replication, or other pleading of
either partie, which is precisely alleged, shall conclude after non-
suit; and hereby are the bookes reconciled.

Eighthly,

(1) [See Note 306.]
Eighthly, where the veritie is apparant in the same record, there
the adverse party shall not be estopped to take advantage of
the truth; for he cannot be estopped to allege the truth, when the
truth appeareth of record. [n] If a fine be levied without any
originall, it is voydable, but not void; but if an originall be
brought, and a retracted entred, and after that a concord is made,
or a fine levied, this is void, in respect the veritie appeareth of
record. [o] An impropiation is made after the death of an inc-
bument, to a bishop and his successors; the bishop by indurance
demiseth the parsonage for fortie yeares, to begin after the death
of the incumbent; the deane and chapter confirmeth it, the inc-
bument dieth; this demise shall not conclude, for that it appeareth
that he had nothing in the impropiation till after the death of the
incumbent.

[h] Ninthly, 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, pro-
fession, attainder of preeminere, of felonie, &c. bastardrie, mulvertie,
and shall conclude the partie, though they be strangers to the re-
cord. Vide in Littleton cap. Videmage, sect. 196, 197, &c. But of
a record concerning the name of the person, quality, or addition,
no stranger shall take advantage, because he shall not be bound by
it. But note, reader, that in case of the multierie prima facie, an
stranger shall take benefit of it, &c. But yet because he may be a
mulier by the ecclesiastical law, and a bastard by the common
law, therefore against such a certificate pleaded, the adverse partie
may allege the special matter, and confess the certificate of the
bishop according to the ecclesiastical law, and allege further the
special matter according to the common law, whereunto the adverse
partie must answer; and so are the books that treat of this matter to
be reconciled. (1) But now let us returne to Littleton.

Sect. 668.

Mes si en action de vast le baron
faict defaut a le grand dis-
tresse, et la feme pria d'etre receeet
soit recevive, el monstra bien tout el
mutter, et comet el est en son remit-
ter, et el barrera le lessor de son ac-
tion, &c.

But if in the action of vast the
husband make default to the grand distresse, and the wife pray to
bee received, and is received, shee may well shew the whole matter,
and how shee is in her remitter, and shee shall barre the lessor of his
action, &c.

"A feme pria d'etre receeet et soit recevute." Receipt, recepi-
tio, commeth of the Latine verbe recipere, so called because
the wife, upon the default of her husband, is received as a feme
sole alone, without her husband, to defend her right; and it is
also called defensio juris; and in this case the wife may bee re-
ceived by the [a] statute: and yet [b] ancient authors who wrote
before the statute, doe speakes of a kind of receit at the common
law.

"Oe. not in L. and M. nor Roh."

(1) See note i to page 245, a.
law. The civilians call resceit, admissionem tertii pro suo interesse, which more properly is resembled to the receit of him in the reversi on or remainder, that is no part to the writ.

Sect. 669.

FOR in every case where the wife is received fordefault of her husband, she shall plead and have the same advantage in pleading, as she were a woman sole, &c. And albeit that the aliencee made the lease to the husband and wife by deed indented, yet this is a remitter to the wife. And also, albeit the aliencee rendereth the same land to the husband and his wife by fine for term of their lives, yet this is a remitter to the wife, because a feme covert which takes an estate by fine, shall not be examined by the justices, &c.

"OME el fuisoit feme sole, &c." In this Section four things are to be understood.

First, when a feme covert is received, that she shall plead as if she were sole. And this is regularly true, yet holdeth not in all cases; for if a feme covert be received in an assise, and plead a record and faile, therefore she shall not be adjudged a disseisor, as shee should be if shee were sole, &c. So if a feme covert only leve a fine executorie, and a seire facias is brought against her and her husband, if shee be received upon the default of her husband, shee shall barre the conusce, which if she had been sole, shee could not doe, and in some other cases.

Secondly, that though the estate taken backe be by deed indented, yet that shall not hinder the remitter in case of a feme covert, or an infant.

Thirdly, that though it be by fine sur render, yet that shall not hinder the remitter; because a feme covert is not to be examined upon 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.

Fourthly, if the husband leve a fine of his wife's lands, and the conusce grant and render the land to the husband and wife, although the wife be 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 proved by Littleton, that the grant and render de facto to the wife in present is not void; for then it could not worke a remitter, but voidable by writ of error; and that avoidable estate doth worke a remitter. (f)

[17 Ann. 17.
23 E. 2. 43.
S. E. 3.
Voucher 178.

(10 Rep. 43.)

Tyrn. 37 Eliz.
Inter Owen &
Morgan. Rot.
270, in hancem,
cum duas
commendas.
Li. 3. fol. 8.
the marquess of
Wriothers's
case. 7 E. 3. 64.
13 E. 3.
Voucher 119.

"Ye not in L. and M. nor Rob.

(1) [See Note 307.]"
Lib. 3.

Sect. 670, 671.

"Ne serra my examine per les justices, &c." The examination of a feme covert ought to be secret; and the effect is to examine her, whether she be content to leve a fine of such lands (naming them particularly and distinctly, and the state that passeth by the fine) of her owne voluntary free will, and not by threats, menaces, or any other compulsorie meanes.

Sect. 670.

And here note, that when any thing shall passe from the wife which is covert of a husband by force of a fine: as if the husband and wife make conusance of right to another, &c. or make a grant and render to another, or release by fine unto another, et 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 be examined before that the fine be taken, because that such fines shall conclude such femes covert for ever. But where nothing is moved in the fine but onely that the husband and wife doe take an estate by force of the said fine, this shall not conclude the wife; for that in such case she shall not be at all examined, &c.

"Quanscun chose passera de la feme covert, &c. per force d'un fine, &c." And of this opinion is [a] Littleton in our books.

* Therefore if the husband and wife be tenants in speciall tayle, and they leve 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 levied by her selfe she cannot be remitted, because thereupon she was examined: but in that case if the land descend to her issue, he shall be remitted. (1).

Sect. 671.

Also, if tenant in tayle discontinue the tayle, and hath issue a daughter, and dieth, and the daughter being

* &c. not in L. and M. nor Roh.
† &c. not in L. and M. nor Roh.

† issue not in L. and M. nor Roh.

(1) [See Note 308.]
being of full age taketh husband, and the discontinue make a release of this to the husband and wife for terme of their lives, this is a remitter to the wife, and the wife is in by force of the taile, cause qui supra, &c.

"ET la feme estant de plein age pretz baron, &c." Here it appeareth, that her full age when she tooke baron is not material, but her coverture at the taking backe of the estate. And so note a diversitie betweene a remitter and a discent: for if a woman be disseised, and being of ful age taketh husband, and then the disseisor dieth seised, this discent shall binde the wife, albeit she was covert when the discent was cast, because she was of full age when she tooke husband, as appeareth before in the Chapter of Discenta. But albeit the wife that hath an ancient right, and being of full age, taketh a husband, and the discontinue leteth the land to the husband and wife for their lives, this is a remitter to the wife; for remitters to ancient rights are favoured in law.

ITEM, si terre soit done a le baron et a sa feme, aver et tener a eux et a les heirs de leur deux corps engendres, et puis le baron aliena la terre en fee, et reprent estate a lui et a sa feme pur terme de leur deux vies; en cest cas il est remitter en fait a le baron et a sa feme, maugre le baron. Car il ne poit estre un remitter en cest cas a la feme, sinon que soit un remitter a le baron, pur cec qu le baron et sa feme sont tout un mesme person en ley, coment que le baron est esstoppe de claymer. * Et pur cec, cee est un remitter en luy enconter son alienation et son reprisiel demesne, come est dit adevant †.

ALSO, if land be given to the husband and to his wife, to have and to hold to them and to the heirs of their two bodies begotten, and after the husband alien the land in fee, and take back an estate to him and to his wife for terme of their two lives; in this case this is a remitter in deed to the husband and to his wife, manger the husband. For it cannot be a remitter in this case to the wife, unless it be a remitter to the husband, because the husband and wife are all one same person in law, though the husband be stopped to claim it. And therefore this is a remitter against his owne alienation and reprisiel, as is said before.

HERE it appeareth, that the husband against his owne alienation, if he had taken the estate to him alone, could not have beene remitted. But when the estate is made to the husband and wife, albeit they be but one person in law, and no moitie betwene them; yet for that the wife cannot be remitted in this case, unless the husband be remitted also, and for that remitters, as hath beene often said, are favoured in law, because thereby the more antient and

* Et pur cee not in L. and M. nor Roh.
† & c. added L. and M. and Roh.
and better rights are restored again; therefore in this case, in
judgement of law, both husband and wife are remitted; which is
worthy of great observation.

Sect. 673.

ITEM, si terre soit due a un feme en taille, le remainder a un auter en
taille, le remainder a le tierce en taille, le feme pret baron, et le baron discon-
tinua la terre en fee; per cet discontinuance all the remainders son discontinues. Car si la feme deviast sans issue, ceux en le remainder n’averont aucum remedie forsque de suer tour
[354. b.] brieves de formeden en le
remainder, quant il avient a tour temps*. Mes si apres tiel discontinuance, estate soit fait a le baron et sa feme pur terme de leur deux vies, ou pur terme d’auter vie, ou auter estate, &c. pur ceo que ceo est un re-
mitter al feme, ceo est † auxy un re-
mitter a tous ceux en le remainder. Car apres ceo que la feme que est en son remitter morust sans issue, ceux en le remainder pouyent enter, &c. sans aucum action suer, &c. En mesme le maner est de ceux que ouyt la rever-
sion apres tiels tailles ‡.

ALSO, if land be given to a wo-
man in tail, the remainder to
another in tail the remainder to the
third in tail, the remainder to the
fourth in fee, and the woman taketh
husband, and the husband discon-
tinue the land in fee; by this discontinuance all the remainders are dis-
continued. For if the wife die with-
out issue, they in the remainder shall
not have any remedy but to sue
their writs of formedon in the re-
mainder, when it comes to their
times. But if after such discontin-
uance, an estate be made to the
husband and wife for term of their
two lives, or for term of another
man’s 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 the
wife which is in her remitter be
dead without issue, they in the re-
mainder may enter, &c. without any
action suing, &c. In the same man-
er is it of those which have the
reversion after such entailles.

LITTLETON having spoken of remitters to the issue in tail, who is privie in bloud, and to the wife, who is privie in per-
son, now he speaketh of remitters to them in reversion or remainder
expectant, upon an estate tail, who are privie in estate. And this
case proveth that the wife is remitted presently; for the equitie of
the law requireth, that as the discontinuance of the estate in tail
is a discontinuance of the reversion or remainder; so, that the re-
mitter to the estate in tail should be a remitter to them in the
reversion or remainder.

Tenant for life the remainder to A. in tail, the remainder to B.
in fee, tenant for life is disseised, a collateral ancestor of A. re-
leases with warrantie and dieth, whereby the estate tail is barred;
the tenant for life, re-entreth, the disseisor hath an estate in fee simple
derterminable

* &c. added L. and M. and Roh.
† auxy not in L. and M. nor Roh.
‡ &c. added L. and M. and Roh.

Sect. 674, 675.

determinable upon the estate tail, and the remainder of B. is
revested in him; and so note in this case the estate for life and
the remainder in fee are revested and remitted, and an estate of inhe-
ritance left in the disseisor. If a fine be levied sur grant et render
to one for life or in tail, the remainder in fee, if tenant for life, or
in tail, execute the estate for life or in tail, this is an execution of
the remainder.

A gift in tail is made to B. the remainder to C. in fee, B. dis-
continueth and taketh backe an estate in tail, the remainder in fee
to the king by deed enrolled; tenant in tail dieth, his issue is re-
mitted, and consequently the remainder, as Littleton here saith;
and the diversity is [a] betweene an act in law, for that may devest
an estate out of the king, and a tortious act, or entry, or a false
and a feined recovery against tenant for life or in tail, which shall never
devest any estate, remainder, or reversion out of the king. [b] But
a recovery by good title against tenant for life, or in tail, where
the remainder is to the king by defeasible title, shall devest the
remainder out of the king, and restore and remit the right
owners. (1)

Sect. 674, 675.

ITEM, si home lessa un mease a
un feme pur terme de sa vie, sa-
vant le recension al lessor, et puis un
faust un feint et faux action envers
la feme, et recoverast le mease envers
luy per default, issint, que la feme quiit
acer envers luy un quod ei deforceant,
seulque le statute de Westm. 2. ore
le recension le lessor est discontinue,
issint que il ne poit acer aucum action
de want. Meen en cest case si la feme
prend boron, et celuy que recoverast
lessa le mease al boron et a sa feme
pur terme de leur deux vie, la feme
est eins en son remitter per force del
primer lease.

ALSO, if a man let a house to a
woman for terme of her life, saving
the reversion to the lessor, and after one sue a feyned and false
action against the woman, and re-
covereth the house against her by
default, so as the woman may have
against him a quod ei deforceant, ac-
cording to the statute of Westm. 2.
now the reversion of the lessor is dis-
continued, so that he cannot have
any action of waste. But in this case
if the woman take husband, and he
which recovereth let the house to the
husband and his wife for terme of
their two lives, the wife is in her re-
mitter by force of the first lease.

Sect. 675.

ET si le primer lessor acer envers eux
breve de want, pur cee que cutant que
la

AND if the husband and wife
make waste, the first lessor shall
have a writ of want against them, for

(1) [See Note 309.]
la femme est en son remitter, il est re-
mise à son recension. Mes semble en
cest cas, si celuy que recoverast per le
faux action, voile porter auer breve
de wast envers le baron et sa femme, le
baron n’ad auer remedy envers luy,
mes de faire default a la grand
distres, &c. et causer la femme d’estre
receve, et de pleder cel matter envers
le second lessor, et monstre coment
l’action per qu’el recoverast fuit faux
et feint en ley, &c. issist le femme poir
* luy barrer, &c.

"FRAINT et faux action," 1. Actio ficta et falsa, but hereof
Littleton speaketh himselfe in this Chapter.

"Quod ei deforceat," is a writ that is given by [c] statue to any
tenant for life or in tayle upon a recovery by default against them
[355. a.] in a praecipe, and lyeth against the recoveror and his heires,
in which case the particular tenant was without remedie
at the common law, because hee could not have a writ of right. And
it is called a quod ei deforceat, for that they are part of the words
of that writ, viz. Precipe A. quod, &c. reddat B. unum mensagium,
&c. quod clamat esse jux et maritagium suum, et quod idem A. ei
injuste deforceat.

"Recoverast, &c. per default." There hath beenne a question in
our books upon these words (by default): as for example, whether
a recoverie had by default in an action of waste against tenant
in dower, or by the courtezie, a quod ei deforceat lyeth by the said
statute. And divers hold opinion, that in that case no quod ei deforceat
lieth, for that judgement is not given by default; for not
withstanding the default, there goeth out a writ to enquire de vasto
facto, et quod vastum prædictum A. (le defendant) fecit; so as the
defendant may give evidence, and the jurors may finde for the
defendant, that no waste was done: as in the assise albeit it bee
awarded by default, yet may the tenant give evidence, and the re-
cognitors of the assise may finde for the tenant; and therefore in
those cases, the defendant or tenant non amissit per defultam, as
the statute and Littleton speaketh, and they cite F. N. B. in the
point. (1)

Secondly, they hold that a quod ei deforceat lieth where the tenant
can have no remedie by attaint; but in this case (say they) an
attaint doth lie.

[55. b.] Thirdly, they hold, that in an action of waste although
it be brought against a tenant in dower, or tenant by the
courtesie that have a freehold, yet the dammages are the prin-
cipall; for they were recoverable against tenant in dower and by
he courtezie by the common law; and the statute of Gloucester gave
the

* luy not in L. and M. nor Roh.
(1) [See Note §10.]

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the place wasted but for a penalite, so as the nature of the action (say they) remaineth still to bee personal, for that the dammages are the principal: [d] and in proofe hereof they cite divers authorities in law. And if two bring an action of waste, the release of one of them is a good barre against the other, [e] and so resolved by the whole court; which proveth (say they) that the dammages are the principal: for if the land were the principal, the release of one of them should not barre the other, no more than in an assise, a writ of ward, an ejectione ferme, &c.

Lastly, they say, that in actions where dammages are to be recovered, and the land is the principal, the demandant never counteth to dammages, and yet shall recover them: but in an action of waste the plaintifie counteth to his dammage; and if the dammages be the principal, then cleerely no quod ei deforcesiat lieth.

Others doe hold the contrarie: and as to the first they say, that albeit that in the writ of waste, judgement is not only given upon the default, yet the default is the principal, 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 upon such a recoverie [*] a writ of deceit lieth; and that writ lieth not but where the recoverie is by default. So in an action of waste against the husband and wife, upon the default of the husband, the wife shall be received; and yet the statute there speakeoth also, per defaltam. So upon such a recoverie in waste against the baron and feme by default, the wife shall have a cui in vitid by the statute; and it speaketh where the recoverie is per defaltam. And albeit the defendant may give in evidence, if he knoweth it; yet when he makes default, the law presumeth he 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 beneficall statute, hath given it him, that he be admitted to his quod ei deforcesiat, in which writ the truth and right shall be tried. And so it is of a recoverie by default in an assise; albeit the recognizers of the assise give a verdict, a quod ei deforcesiat lieth. And all this as to this point was resolved by the whole court of common pleas; and so the doubt in 41 Eliz. 3. 8. well resolved. *Nota, if tenant for life make default after default, and he in the reversion is received 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 have a quod ei deforcesiat.

As to the second objection, that the defendant may have an attaint. First it was utterly denied, of the other part, [f] that an attaint did lie in this case; for though it be taken by the oath of twelve men, yet it is but an enquest of office, whereupon no attaint did lye on either partie, as upon an enquierie of collusion, although it be by one jurie, nor upon a verdict of quale ius. Secondly, admitting that an attaint did lie in this case, yet it followeth not ex consequenti, that a quod ei deforcesiat did not lie: [g] for if an assise bee taken by default, a quod ei deforcesiat doth lie; and yet the pr-trie may have an attaint; for this is no enquest of office, but a recognizance by the recognizers of an assise, who were returned the last day, and not returned upon the awarding of the assise by def way. And as to the second objection, of this opinion was the whole cort in
in Edward Elmer's case above mentioned. As to the third objection, that the damages should be 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 damages were not at the common law (for the common law never giveth more damage than the losse amounteth unto), but are given by the statute of Glocester; but the place wasted is worthier being in the realtie, than damages that be in the personaltie: Et omne majus dignum vrahit ad se minus dignum, quanvis minus dignum sit antiquius et a digniori debet fieri denomi- natio. 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 Glocestere doth give the place wasted and treble damages 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 confesses the action, the plaintiff may have judgement for the place wasted, and release the damages; which proveth (and so Fitzcherbert collecteth) that the damages are not the principall: for a man shall never release the principall and have judgement of the accessorie: and an action of waste against tenant for life is as real 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 tenent, which is only in the personaltie, and then the release of the one doth bar both; neither could summons and severance lie in that case; [A] but in an action of waste (in the tenent), either against tenant for life or for years, the release of the one doth not barre the other; and in both those cases summons and severance doth lie: and this point was also resolved accordingly in Edward Elmer's case. But when these three points were resolved by the court for the demandant, then the councell of the tenant moved in arrest of judgement another point, viz. that the judgement was given upon a nihil dicit, which is always after appearance, and not per defultam; and thereupon judgement was stayed. (1)

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 have a quod et deforceat, for so Littleton saith: assint quod et foit ovver quod et deforceat: Now it appeareth by our bookes, that the tenant for life at the common law was remedlesse, because he could not have (as hath been sayd) a writt of right; and consequently the feme covert in this case could not bee remitted by the taking of an estate to her husband and her, because her right was remedlesse, and could have 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 Alteration causeth ratione legii, alteratur et lex, et casminus causad seu ratione legii causat et lex: as in this case the statute of W. 2. giving remedie to this feme tenant for life, in this it giveth her abilitie to bee remitted, because her right is not now remedlesse, but shee hath an action to recover it.

1 Littleton warily putteth his case, that the recoverie was had against the feme while she was sole; for there was a time when it was a question, whether a recoverie being had by default against the "husband and wife, (the wife being tenant for life)" the said statute

(1) [See Note 311'].
statute gave a _quad ei desfercat_ to the husband and wife, for that the statue gave it against tenant in dower and tenant for life, &c. and here the husband is not tenant for life, but seized in the right of his wife, and therefore out of the statute: and of this opinion is one (g) booke; but (Afrogra juris non sunt iure, et parum differunt quae re concordant) the contrary hath beene adjudged, and so that point is now in peace: and the like in case of receit for him in resveyon. But if the husband and wife lose by default, and the husband die, the wife shall not have a _quad ei desfercat_; for a _cas in viis_ is given to her in that case by a former statute, viz. W. 2. cap. 3. These things are worthy of due observation, and points of excellent learning; and Littleton in our booke speaks of another kind of _quad ei desfercat_ at the common law, upon a diessisin, which you may read. But now let us heare him in his booke.

"Le resveryon est discontinue, iacet qute il ne peut ayer action de "waste." Here it appeareth, that when the resveryon is deceased, the lessor cannot have an action of waste, because the writ is, that the lessee did waste _ad ehexrationem_ of the lessee, and that inheritance must continue at the time of the action brought. And it is to bee observed, that in an action of waste brought by the lessor against the lessee, the lessee in respect of the privitee cannot plead generally, _vica en le resveryon_, viz. (f) that the lessee hath nothing in the resveryon, but he must shew how and by what means the resveryon is deceased out of him; and this holdeth (as hath been said) betweene the lessor and the lessee: but if the grantee of a resveryon bringeth an action of waste, the lessee may plead generally, that he hath nothing in the resveryon. And yet in some special cases an action of waste shall lie, albeit the lessor had nothing in the resveryon at the time of the waste done. As if tenant for life make a feoffment in fee upon condition, and waste is done, and after the lessee re-enter for the condition broken; in this case the lessor shall have an action of waste. And so if a bishop make a lease for life or yeares, and the bishop die, the lessee, the see being void, doth waste, the successor shall have an action of waste. So if lessee for life be diseised, and waste is done, the lessee re-enter; an action of waste shall be maintained against the lessee; and so in like cases: and yet in none of these cases the plaintiff in the action of waste had any thing in the resveryon at the time of the waste made; but these especiall cases have their several and especiall reasons, as the learned reader will easily finde out.

Here note, that albeit the action be false and feigned, yet is the recuperie so much respected in law, as it worketh a discontinuance.

(f) But if tenant for life suffer a common recuperie, or any other recuperie by coine and consent betweene the tenant for life and the recoveror, this is a forfeiture of his estate, and he in the resveryon may presently enter for the forfeiture. Since our author wrote, the statute of 14 El. cap. 8. hath beene made concerning this matter, which is to be considered, [g] and hath beene well constrayned and expounded, and needs not here to be repeated.

And it is to be observed, that although the discontinuance gryth by matter of record, yet the remitter may be wrought by mai in _patria_; and of the residue of these two Sections sufficient be beene said before.
ITEM, si le baron discontinua le terre de sa feme, et puis reprist estate a luy et a sa feme, et al tierce person pur terme de lour vies, ou en fee, ceo * n'est un remitter a la feme, forsque quant a la moitie; et pur fauter moitie et covrunt apres la mort son baron de suer un briefe de cui in vita.†

"CEO n'est remitter forsque quant al moitie, &c." Albeit there is authoritie in our bookes to the contrarie, 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.

ALSO, if the husband discontinue the land of his wife, and after taketh backe an estate to him and to his wife, and to a third person for term of their lives, or in fee, this is no remitter to the wife, but as to the moitie; and for the other moitie shee must after the death of her husband sue a writ of cui in vita.

ITEM, si le baron discontinua la terme sa feme, et ala ouster le mere, et le discontinua lesse mesma la terre al feme pur terme de sa vie, et liven a luy seisin; et puis le baron revient, et agreea a cel livere de seisin, ceo est un remitter a la feme; et encore si la feme fuissent sole al temps de le leas fait a luy, ceo ne serroit a luy un remitter. Mes entant que et fut covert de baron al temps de la leas, et de le livere de seisin fait a luy, comen que el prist solement le livere de seisin, ceo fut un remitter a luy, pur ceo que feme covert serra adjudge sicom enfant deins age en tiel cas, &c. Quare en cert cas si le baron quant il revient, voil disagree a le leas et livure de seisin fait a son feme en son absence, si † ceo oustera son feme de son remitter, || ou nemuy, &c.

ALSO, if the husband discontinue the land of his wife, and goeth beyond sea, and the discontinue let the same land to the wife for term of her life, and deliver to her seisin; and after the husband commeth backe, and agreeeth to this livere of seisin, this is a remitter to the wife: and yet if the wife had been sole at the time of the lease made to her, this should not be to her a remitter. But inasmuch as she was covert baron at the time of the lease, and livere of seisin made unto her, albeit she taketh only the livere of seisin, this was a remitter to her because a feme covert shall be adjudged as an infant within-age in such a case, &c. Quare in this case if the husband when he comes backe, will disagree to the lease and livery of seisin made to his wife in his absence, if this shall ouste his wife of her remitter, or not, &c.

"ET

—est, L. and M. and Roh.
added L. and M. and Roh.
— L. and M. and Roh.

I ou nemuy, &c. not in L. and M. nor Roh.
nor MSS.

ET fuis le baron revient, et agress, &c. In this case the estate is in the same covertly by the livery before any agreement by the husband; and of this opinion is Littleton in our books.

"Ala ouster le mere." If he had been within the realm, it doth not alter the case.

"Quere en ceat case si le baron, &c." Here is a question moved by Littleton, whether the disagreement of the husband shall ouste the wife of her remitter. And it seemeth that the disagreement shall not devest the remitter.

First, because the state made to the wife which wrought the remitter is baniished and wholly defeated, and therefore no disagreement of the husband can devest the state gained by the lease, which by the remitter was devested before.

Secondly, for that the law having once restored her antiquity and better right, will not suffer the disagreement of the husband to devest it out of her, and to revive the discontinuance, and revest the wrongfull estate in the discontinuance.

Thirdly, for that remitters tending to the advancement of ancient rights are favoured in law.

And so it is for the same causes, if the wife survive her husband, she cannot claime in by the purchase made during the coverture; but the law adjudgeth her in her better right. But if both estates be waivable, there albeit the wife primf favre is remitted; yet after the decease of her husband she may elect which of the estates she will. As if lands be given to the husband and wife, and their heires, the husband make a feoffment in fee, the socoffee giveth 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 shee will; for both estates are waivable, and her time of election and power of wayer accrewed to her first after the decease of her husband. If lands be given to a man and the heires females of his body, and he maketh a feoffment in fee, and take backe an estate to him and his heires, and dieth, having issue a daughter, leaving his wife grossement enseint with a sonne and dieth, the daughter is remitted; and albeit the sonne be afterward borne, he shall not devest the remitter. (1)

Sect. 678.

I TEM, si le baron discontinua les tenementa son fema, et le discontinua est disseisie, et puis le disseisipour quelle mesmes les tenements a le baron et a son fema pur terme de v. eeo est un remitter a la fema. Mes si le baron et son fema furent de covin &c et consent

A LSO, if the husband discontinue the lands of his wife, and the discontinuance is disseised, and after the disseisipour the same lands to the husband and wife for terme of life, this is a remitter to the wife. But if the husband and his wife we

(1) [See Note 312.]
But the assent of the husband and wife doth hinder the remitter of the wife; for covine and consent in many cases to do a wrong, doth choak a meere right, and the ill manner doth make a good matter unlawful.

"Covin," Covina, commeth of the French word Con-
vine, and is a secret assent determined in the hearts of two or more to the defrauding and prejudice of another.

A woman is lawfully intitled to have dower, and she is of covine and consent, that one shall disseise the tenant of the land, against whom she may recover her lawfull dower, all which is done accordingly; the tenant may lawfully enter upon her, and avoid the recovery in respect of the covine. But if a disseisor, intruder, or abator, doe endow a woman that hath lawfull title of dower, this is good, and shall binde him that right hath, if there were no such covine or consent before the disseisement, abatement, or intrusion.

And so it is in all cases where a man hath a rightfull and just cause of action; yet if he of covine and consent doe raise up a tenant by wrong against whom he may recover, the covine doth sufficate the right, so as the recovery, though it be upon a good title, shall not binde or restore the demandant to his right.

If tenant in taile and his issue disseise the discontinuee to the use of the father, and the father dieth, and the land descendeth to the issue, he is not remitted against the discontinuee in respect he was privie and partie to the wrong; but in respect of all others he is remitted, and shall daigne the first warrantee. And so note a man may be remitted against one, and not against another.

A. and B. joyn tenantes be intitled to a real action against the heire of the disseisor, B. cause the heire to be disseised, against whom and B. recover and sue execution. B. is remitted, for that he was not partie to the covine, and shall hold in common with A.; but A. is not remitted, for the reason that Littleton here sheweth.
"Pur ceo que el est disceisesse." Note, it is regularly true, that a feme covert cannot be a disceisesse by her commandement or procurement precedent, nor by her assent or agreement subsequent; but by her actual entry, or proper act, she may be a disceisesse. And therefore some doe hold that Littleton must be intended, that the husband and wife were present when the disceisin was done; and others doe hold that Littleton is good lawe, albeit she were absent; for that if her procurement or agreement be to doe a wrong, to cause a remitter unto her in this special case, she shall faile of her end, and remitted she shall not be; but in this special case she shall be holden as a disceisesse by her covine and consent que caus, to hinder the remitter. And here it appeareth, that albeit the husband be of covine and consent, &c.; yet if the wife were not of covine and consent also, she shall be remitted, because, as Littleton saith, there was no default in the wife.

Sect. 679.

Item, si tiel discontinuee fessit estate de francktemenem al baron et a son feme per fait menent sur condition, scilicet, rescrant al discontinuee un certaine rent, et pur default de payment un re-entry, et pur ceo que le rent est adherer le discontinuee enter; donques de cet entrie le feme avera un assise de novel disceisin, apres la mort son baron enver le discontinuee, pur ceo que le condition fuit tout ouysterment aniente, entant que la feme fuit en son remitter; une core le baron ovesque sa feme ne poiient aver assise, pur ceo que le baron est estoppe, &c.

Pt. Com. in Amy Townsend's case.
In R. 2. ch.
Remitter, 1b.

It is hereby to be observed, that the wife is presently remitted, and that the conditions, and rents, and all other things annexed to, or reserved upon the state (that is vanished and defeated by the remitter) are defeated also. (1)

Sect. 680, 681.

Item, si le baron discontinuea les tenements sa feme, et reprises estatte a lay pur terms de sa vie, le remain der aprés son decease a sa feme pur terme

ALSO, if the husband discontinue the tenements of his wife, and take backe an estate to him for life, the remainder after his decease to his
his wife for term 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 surviveth the husband, this is a remitter to the wife, because a freehold in law is cast upon her against her will. And inasmuch as she cannot have an action against any other person, and against her selfe shee cannot have any action, therefore she is in her remitter. For in this case, although the wife doth not enter into the tenements, yet a stranger which hath cause to have an action, may sue his action against the wife for the same tenements, because shee is tenant in law, albeit that she be not tenant in deed.

Sect. 681.

THE tenant of freehold in deed is he, who, if he be seised of the freehold, may have an assise; but tenant of freehold in law before his entrie in deed, shall not have an assise. And if a man bee seised of certaine land, and hath issue a sonne who taketh wife, and 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 hee had a fee and freehold in law. And so note, that a precipe quod reddat poit auxybiem estre mantenens envers celuy que ad franktenement en ley, sicome envers celuy que ad le franktenement en fait.

HERE five things are to be observed. First, that a remainder expectant upon an estate for life worketh no remitter, but when it fall in possession: for before his time he can have no action, and no
no freehold is in him. Secondly, though the woman might waive the remainder, yet because she is presently by the death of the husband tenant to the prœcipe, it is within the rule of remitter, and her power of waiver is not material. Thirdly, that a freehold in law being cast upon 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 prœcipe lyeth against one that hath but a freehold in law. Fifthly, that a woman shall be endowed where the husband hath the inheritance, and but a freehold in law, as hath been said in the Chapter of Dower.

Sect. 682.

ALSO, if tenant in taille hath issue two sons of full age, and he let-teth the land tailed to the eldest son for terme of his life, the remainder to the younger son for terme of his life, and after the tenant in taille dieth; in this case the eldest sonne is not in his remitter, because bee took as estate of his father. But if the eldest die without issue of his bodye, then this is a remitter to the younger brother, because he is heire in taille, and a freehold in law is escheated, and cast upon him by force of the remainder, and there is none against whom he may sue his action.

[359. a.]

EN mesme le maner est, lou home soit disceisie, et le disceisor morust seisie, et les tenements disscendant a son heire, et l'heire le disceisor fait un leas a un home de mesmes les tenements pur terme de † vie, le remainder a le dis-seise pur terme de vie, ou en taile, ou en fee, † le tenant a terme de vie morust,

* &c. added L. and M. and Roh.
† son added L. and M. and Roh.
† et added in L. and M. and Roh.
Sect. 684.

**Nota.** Si tenant en taile enfeoffa son fils et un auter per son fait de la terre taile, en fee, et livery de seisin est fait a l'auter accordant al fait, et le fils rien consuant de ceo fi agreea a le feoamento, et puis celsay que prist le livery de seisin devy, et le fils ne occupia la terre, ne prent aucun profit del terre durant la vie le pier, et puis le pieor morust, ore ceo est un remitter al fils, pur ceo que le fraunktenement est ject sur luy per le survivor; et nul default fuit en luy, pur ceo que il ne unque agreea, &c. en la vie son pieer, et il ad nul encers que il poit suer breife de formedon, &c.

Note, if tenant in taile infeoffed his son and another by his deed of the land intailed, in fee, and livery of seisin is made to the other according to the deed, and the son not knowing of this agreement not to the feoffment, and after he which tooke the livery of seisin dieth, and the son doth not occupy the land, nor taketh any profit 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 upon him by the survivor; and no default was in him, because he did never agree, &c. in the life of his father, and he hath none against whom he may sue a writ of formedon, &c.

It should seeme by this mark, that this was an addition to Littleton; but it is of Littleton's owne worke, and agreeth with the originall, saving the originall begun this Section thus: Item si tenant en taile, &c.

"Per son fait, &c." Here Littleton materially addeth by his deed; for if a man intendeth to [b] make a feoffment by parcel to A. and B. and he and B. come upon the land, A. being absent, and make livery to B. in the name both of B. and A. and to their heires, this shall enure only to B.; for neither can a man absent take livery, nor make livery, without deed.

"Et livery de seisin est fait a l'auter accordant al fait, &c." Note, livery being made to one according to the deed, enureth to both, because the deede whereunto the livery refereth is made to both; for the rule is, that Verba relata hoc maximè operantur per referentiam ut in eis in casu videntur.

[359. b] "Et le fies nient consuant de ceo, ne agreeaa a le feoamento." Here it appeareth, that if the sonne be consuant, and agreeth to
Of Remitter.

Sect. 685.

OF if a man be disseised of certaine land, and the disseisour make a deed of disseisement whereby he infoseeth B. C. and D. and liuerie of seisin is made to B. and C. but D. was not at the livery of seisin, nor ever agreed to the feoffment, nor ever would take the profits, &c. and after B. and C. die, and D. survive them, and the disseisee bringeth his wrunt upon disseisain in the person against D. hee shall shew all the matter, how he never agreed to the feoffment, and hee shall discharge himself of dammages, so as the demandant shall recover 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 recover dammages in a writ of estrie founded upon a disseisain against him which is found tenant. And this is a proofe in the other case.

FOR if a man be disseised of certaine land, and the disseisour make a deed of feoffment whereby he infoseeth B. C. and D. and liuerie of seisin is made to B. and C. but D. was not at the livery of seisin, nor ever agreed to the feoffment, nor ever would take the profits, &c. and after B. and C. die, and D. survive them, and the disseisee bringeth his wrunt upon disseisain in the person against D. hee shall shew all the matter, how he never agreed to the feoffment, and hee shall discharge himself of dammages, so as the demandant shall recover 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 recover dammages in a writ of estrie founded upon a disseisain against him which is found tenant. And this is a proofe in the other case.

\* 
\* \* same celey D. L. and M. and Roh.
\* et added L. and M. and Roh.
\* cap. v. not in L. and M. nor Roh.
\* sect added L. and M. and Roh.
\* l ce added L. and M. and Roh.

fait, ac per son agreement, † mes après la mort son pere, cvo est un remitter a lay, entant que il ne poit sur action de formedon envers nul auter person, &c.

case that forasmuch 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, inasmuch as he cannot sue an action of formedon against any other person, &c.

THIS case standeth upon the same reason that the next precedent case doth.

"Mes celuy que est trouve tenant, &c." Here it appeareth; that acts of parliament are to be so construed, as no man that is inoffent, or free from injurie or wrong, be by a literall construction punished or endamaged: and therefore in this case, albeit the letter of the statute is generally to give dammages against him that is found tenant, and the case that Littleton here putteth, D. being survivor, is consequently found tenant of the land; yet because he waived the estate, and never agreed to the feoffment, nor tooke any profits, he shall not be charged with the dammages.

Sect. 686, 687.

ITEM, si un abbe aliena la terre de son meason a un auter en fee, et le auter en le son fait charge la terre ove un rent charge en fee, et puis l'alienie infeffe l'abbe ove license, a aver et tener al abbe et a ses successors a tous jours, et puis l'abbe morust, et un auter est eslien, et fait abbe: en cet case l'abbe que est le successor, et son covent, sont en leur remitter, et tiendenr la terre discharg, pur cye que mesme l'abbe ne poit aver aucune action, † ne breve d'entre sine assensu capituli, de mesme la terre envers nul auter person.

(1)

ALSE, if an abbot alien the land of his house to another in fee, and the alience by his deed charge the land with a rent-charge in fee, and after the alience infeffe the abbot with licence, to have and to hold to the abbot and to his successors for ever, and after the abbot die, and another is chosen, and made abbot: in this case the abbot that is the successor, and his covent, are in their remitter, and shall hold the land discharged, because the same abbot cannot have 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 un evesque, ou un deane, ou auters ticle persons aliena, &c. sans assent, &c.

IN the same manner it is, where a bishop or a deane, or other such persons alien, &e. without assent, &e. and

† mes—gue, L. and M. and Roh.  † ne—de, L. and M. and Roh.

(1) [See Note 314.]
Of Remitter.

Sect. 688.

Sc. et l'aliene charge la terre, Sc. et puis l'évesque repris estet d de mesme la terre pour licence, a luy et a ses sucesseurs, et puis l'évesque devie; son successor est en son remitter, comme en droit de son eglise, et defatera le charge, Sc. causà quà supra.

OUR 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 reversion or remainder, and their heires; now he speaketh of remitters to bodies politike and incorporate, as to abbots, bishops, deanics, &c. And as discents doe remit the heire which comes in the her, 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." This is, of the king and the lords immediate and mediate, to dispense with the statutes of mortmaine; whereof see more before, Sect. 140.

Sect. 688.

ITEM, si home suist faux action envers le tenant en taile, sicome home voile suer envers luy un briefe d'entre en le post, supposant per son briefe que le tenant en taile n'ad pas entre sinon per A. de B. que diseseist l'ayel le demandant, et ceo est faux, et il recouvre envers le tenant en le taile per default, et suist execution, et puis le tenant en taile morut, son issue poi per briefe deformedon envers luy que recouvre; et s'il voile pleader le recouvre envers le tenant en taile, l'issue poit dire, que le dit A. de B. ne diseseist peyni l'ayel celuy que recouverat, en le maner come son briefe supposta, et issint il fauxera* le recouvre. Auxy poftio que ceo fuit voyer, que le dit A. de B. diseseist l'ayel le demandant que recouverat, et que apres le disseisin le demandant, ou sor pier, ou son ayel per un fait avoyent relese al tenant

ALS0, 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 taile had not his entrie but by A. of B. who diseseised the grandfather of the demandant, and this is false, and he recovereth against the tenant in taile by default, and sueth execution, and after the tenant in taile dieth, his issue may have a writ of formedon against him which recovereth; and if hee will plead the recovereth against the tenant in taile, the issue may say, that the said A. of B. did diseseise the grandfather of him which recovered, in manner as his writ suppose, and so he shall falsifie his recoverie. And admit this were true, that the said A. of B. did diseseise the grandfather of the demandant which recovered, and

* leunc, L. and M. and Boh.
tenant en taile tout le droit que il
avroit en la terre, &c. et cec nien
croissant il neissait un briefe
d’entree en le post envor le
tenant en taile, en le manner come est
acuanitdit, et le tenant en taile pleda
et cethy, que le dit A. de B. ne disseisit
pas son ayel, en le manner come son
briefe supposa; et sur ceci sont a issue,
et l’issue est trove par le demandant,
per que il ad judgement de recover, et
suixt execution; et puis le tenant en le
taille mordez, son issue estoit avoir un
briefe de formedon encev yl que
recovera; et s’il voile plead le reco-
overser per l’action trie envor son pier
que fuit tenant en taile, donque il
poit monstner et pleadar le release fuit
al son pier, et eisent l’action que fuit
sue, feint en ley.†

"L’recovera envers le tenant en taile per default." Littleton
addeith (by default) because if the [c] recovery passed upon
an issue tried by verdict, he shall never falsifie in the point tried,
because an attaint might have beene had against the jurors; and
albeit all the jurors be dead, so as the attaint doe faile, yet the
issue in taile shall not falsifie in the point tried, which, untill it be
lawfully avoided, pro veritate accipitur. As if the tenant in taile
be impleaded in a formedon, and he traverseth the gist, and it is
tried against him, and thereupon the demandant recover; in this
case the issue in taile shall not falsifie in the point tried; but he
may falsifie the recovery by any other matter: as that the tenant
in taile might have pleaded a collaterall warrantie, or a release, as
Littleton here putteh the case, or to confesse and avoid the point
tried. And Littleton’s case holdeth not only in a recovery by de-
fault, whereof he speaketh, but also upon a nihil dicit, or confession
or demurrer.

Sect. 689.

E T il semble, que feint action est
autant a dire en English, a fained
action, c’estascovoir, tiel action que
coment que les parolx de le briefe sont
voyere, encore per certaine causes il
n’ad cause ne title per la ley de recover
per

* que fuit not in L. and M. nor Roh.

† &c. added L. and M. and Roh.

A ND it seemeth, that a fainted ac-
tion is as much to say in English,
a fained action, that is to say, such an
action as albeit the words of the writ
be true, yet for certaine causes hee
hath no cause nor title by the law to recover.
of Remitter.

Sect. 690.

recovery by the same action. And a false action is, where the words of the writ be false. And in these two cases aforesaid, if the case were such, that after such recovery, and execution thereupon done, the tenant in tayle had diseised him that recovered, and thereof died seized, whereby the land descended to his issue, this is a remitter to the issue, and the issue is in by force of the tayle; and for this cause I have put these two cases precedent, to enforme thee (my sense) that the issue in tayle by force of a descinet made unto him after a recovery and execution made against his ancestor, may be as well in his remitter, as he should be by the descinet made to him after a discontinuance made by his ancestor of the entayled lands by feastment in the countrie, or otherwise, &c.

HERE Littleton explaineth what a faint action is, and what a false action is, which is plain and perspicuous. And here it is to be observed, that a remitter may be had after a recovery upon a faint action by a disseisin and a descinet, as well as by a descinet after a discontinuance by a feastment, &c.

Sect. 690.

ALSO, in the cases aforesaid, if the case were such, that after that the demandant have judgement to recover against the tenant in tayle, and the same tenant in tayle dieth before any execution had against him, whereby the tenements descend to his issue, and he who recovereth sueth a seire facias out of the judgement to have execution of the judgement against the issue in tayle, the issue shall plead the matter as aforesaid; and so prove that the said recovery was false or faint in law, and so shall barre him to have execution of the judgement.

* ent added L. and M. and Roh.
† dit not in L. and M. nor Roh.
HERE it appeareth, that if a judgement be given against a tenant in taille upon a fault or false action, and tenant in taille die before execution, no execution can be sued against the issue in taille. But if in a common recoverie judgement bee had against tenant in taille where he voucheth, and hath judgement to recover over in value, albeit the tenant in taille dyeth before execution, yet the recoveror shall execute the judgement against the issue in taille in respect of the intended recompence; and for that it is the common assurance of the realme, and is well warranted [c] by our books, and was not invented by justice Choke, who was a grave and learned judge in the time of E. 4. (as some hold by tradition); but it may bee that it was upon former authorities and opinions of judges discovered by him, assented unto by the rest of the judges.


If a recoverie bee had against tenant for life without consent or cowine, though it be without title, and execution be had, and tenant for life dieth, the reversion or remainder is discontinued, so he in the reversion or remainder cannot enter; but if such a recovery bee had by agreement and cowine betwenee 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 reversion or remainder may enter for the forfeiture. So it is if the tenant for life suffer a common recovery at this day, it is a forfeiture of his estate; for a common recovery is a common conveyance or assurance, whereof the law taketh knowledge. Since Littleton wrote, there were two statutes [c] made for preservation of remainders and reversions expectant upon any manner of estate for life; the one in 32 H. 8. the other in 14 Eliz.: but 32 H. 8. extended not to recoveries, when tenant for life came in as vouchee, &c. and therefore that act is repealed by 14 Eliz. and full remedie provided for preservation of the entrie of them in reversion or remainder. But the statute of 14 Eliz. extendeth not to any recovery, unless it be by agreement or cowine. Secondly, [f] if there be tenant for life, remainder in taille, the reversion or remainder in fee, if tenant for life be impeached by agreement, and he vouche tenant in taille, and he vouch over the common vouchee, this shall barre the reversion or remainder in fee, although he in the reversion or remainder did never assent to the recovery; because it was not the intent of the act to extend to such a recovery, in which a tenant in taille was vouched; for he hath power by common recovery, if he were in possession, to cut off all reversions and remainders. And sof if tenant for life had surrendered to him in remainder in taille, he might have barred the remainders and reversions expectant upon his estate. Thirdly, where the proviso of that act speaketh of an assent of record by him in reversion or remainder, it is to be understood, that such assent must appear upon the same record, either upon a voucher, aid prior, receit, or the like; for it cannot appeare of record, unless it be done in course of law, and not by any extrajudicial enterie, or by memora

Sect. 690.

32 H. 8. eib. 31. 14 Eliz. cap. 8. (Sect. 675.) 10 Rep. 40.)

[f] Lib. 3. fol. 89, 91. Lincoln Colledge case.


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ITEM, if tenant in tail discontinue the taile, and morust, and son issue port son briefe de formeden envers le discontinuee estant tenant de franktenement del terre et le discontinuee pleda que il n'est tenant, mes ouserment disclaime de le tenancy en la terre; en c'est cas le judgement serra, que le tenant alast sans jour, et aprés tzieljudgement l'issue en le taile que est demandant poit entrer en la terre, nyent contraistant le discontinuance, et per tziel entril il serra adjudge eins en son remitter. Et la cause est, pur ceo que si aucun home suist precepte quod reddat envers aucun tenant de franktenement, en quel action le demandant ne recovera damages, et le tenant pledast nonenture, * ou auterment disclaime en le tenancye, le demandant ne poit avercer son briefe, † et dirra que il est tenant, comme le briefe suppose. Et pur cet cause le demandant aprés ceo que judgement est done que le tenant alast sans jour, poit entrer en les tenements demands, le quel serra auxy grand avantage a luy en ley, sicome il avoit judgement de recovere envers le tenant, et per tziel entril il est en son remitter per force del taile. Mes lon le demandant recovera dammages envers le tenant, la le demandant poit avercer, que il est tenant, comme le briefe suppose, et ceo pur l'advantage del demandant pur recovere ses dammages, ou auterment il ne recoveroit ses dammages, quenx sont † ou fuertent a luy dones per la ley.

ALSO, if tenant in tail discontinue the taile, and dieth, and his issue bringeth his writ of formeden against the discontinuee (being tenant of the freehold of the land) and the discontinuee plead that he is not tenant, but utterly disclameth from the tenancy in the land; in this case the judgement shall be, that the tenant goeth without day, and after such judgement the issue in the tail that is demandant may enter into the land, notwithstanding the discontinuance, and by such entry hee shall be adjudged in his remitter. And the reason is, for that if any man sue a precepte quod reddat against any tenant of the freehold, in which action the demandant shall not recovere damages, and the tenant pleads nonenture, or otherwise disclame in the tenancie, the demandant cannot averce his writ, and say that hee is tenant, as the writ supposeth. And for this cause the demandant after that judgement is given that the tenant shall goe without day, may enter into the tenements demanded, the which shall bee as great an advantage to him in law, as if he had judgement to recovere against the tenant, and by such entry hee is in his remitter by force of the entaille. But where the demandant shall recovere damages against the tenant, there the demandant may averre, that he is tenant, as the writ supposeth, and that for the advantage of the demandant to recovere his dammages, or otherwise hee shall not recovere his dammages, which are or were given to him by the law.

HERe it appeareth, that upon the plea of nonenture, or of disclaimer of the tenant in a formeden in the descender, albeit the expresse judgement be that the tenant shall goe without day, yet in judgement of law the demandant may enter according to the title of

* ou—mer, L. and M. and Rob.
† ou sefrent, not in L. and M. nor Rob.
of his writ, and bee seised in tayle, notwithstanding the discontinuance. And here, Littleton saith, the demandant shall be adjudged in his remitter; where bee taketh remitter in a large sense: for in this case the demandant hath not two rights, but hath only one antient right, and restored to the same by course of law; and so remitter here is taken for a continuance of the right.

"Ou le demandant ne recouvrera dommage." Here is to be observed, that in such a frappe where the demandant is to recover damages, if the tenant plead non-tenure or disclaim, there the demandant may averre him to be tenant of the land, as his writ suppose for the benefit of his damages, which otherwise hee should lose, or pray judgement and enter. But where no damages are to bee recovered, as in a formedon in the dissembler, and the like, there hee cannot averre him tenant, but pray his judgement and enter, for thereby hee hath the effect of his suit: Et frustra fit per plura, quod fieri posset per pauciora.

"Averre." To averre or avouch, or verifie, verificare, whereof commeth verificatio, an averment; and is so said as well in English as in French; and is two-fold, viz. general and particular. A general averment, which is the conclusion of every plea to the writ, or in barre of replications and other pleadings (for counts or avowries in nature of counts need not bee averred) containing matter affirmative, ought to be averred, et hoc paratus est verificare, &c. Particular averments are, as when the life of tenant for life, or tenant in taile, are averred; and there, tho' this word (verificare) be not used, but the matter avouched and affirmed, it is upon the matter an averment. And an averment containeth as well the matter as the forme thereof.

"Que le tenant alast sans jour." Quod tenens est sine die. This is the entrée of the judgement in that case, that the tenant shall goe without day, that is, to be discharged of further attendance; and this is sometime finall for that action, whereof Littleton here puttheth an example; and sometime temporarie, whereof Littleton also hath put an example: as when excommenagement is pleased in disabilitie of the plaintifie or demandant, there the award is, that the tenant or defendant shall goe without day; and yet when the demandant or plaintifie have purchased his letters of absolution, upon shewing them to the court, he may have a rescommand or reattachment to recontinue the cause againe. But it is to be knowne, that when judgement is given for the tenant or defendant upon a plea in barre, or to the writ, &c. the judgement is all one, viz. quod tenens, or defendens est inde sine die, and shall have reference to the nature and matter of the plea, and so be taken either to goe in barre, or to the writ. So when judgement is given against the plaintifie, either in barre of his action, or in abatement of his writ, &c. the judgement is all one, viz. nihil capitiat per breve; and it appeareth by the record whether the plea did goe in barre, or to the writ. And the cause of the judgement is never entred in the record in any case; for that upon had of the record it appeareth therein.
Sect. 692.

ITEM, si home soit disaccisie, et le disseisor dery, son heire estant cins per disceint, ore l'entrée de le disaccis est tolle; et si le disseiscie porta son briefe d'entrée sur disaccis in le per, enters l'hei, et l'hei disclaime en le tenaney, &c. le demandant poit avercer son briefe que il est tenant come le briefe suppose, s'il voit, pur recuperer ses damages: men ancere s'il voit reliquischer le averment, &c. il poit loyallyment entrer en la terre per cause de disclaimce, nient obstant que son entrie aderat fuit tolle. Et ceo fuit adudge devant mon master sir R. Danby, judes chiefe justice de la common banke et ses compagnaions, &c.

"ITEM si home soit disaccisie, &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 judgement to recover, yet shall he be remitted; because he in judgement of the law shall be in according to the title of his writ, and by his entrie defeat the discontinuance, and consequently is remitted to his antient estate.

"Sir Robert Danby," knight, was a gentleman of an ancient and faire descended family, and chiefe justice of the court of communes; a grave, reverend, and learned judge, of whom our author speaketh here with very great reverence, as you may perceive. And here is to be noted how necessarie it is, after the example of our author, to observe the judgements and resolutions of the sages of the law.

Sect. 693.

ALSO, where the entrie of a man is congceleable, although that he takes an estate to him when he is of full age for terme of life, or is tale, or in fee, this is a remitter to him, if such taking of the estate be not by deed indented, or by matter of

* luy added L. and M. and Roh.
Of Remitter.

Sect. 693.

estoppema. Car si home soit disseise, et repren estat de le disseisor sans fait, ou per fait polle, cee est un remitter at disseisee, &c.

HERE appeareth a diversity betweene a right of enrie and a right of action; for if a man of full age having but a right of action, taketh an estate to him, hee is not remitted: but where hee hath a right of enrie, and taketh an estate, he by his enrie is remitted, because his enrie is lawfull. And if the disseisor infeoffe the disseisee and others, the disseisee is remitted to the whole, for his enrie is lawfull: otherwise if it his enrie were taken away.

"Lou l'entrie est concevable." A. is disseised of a mannor, whereunto an advowson is appendant, an estranger usurpeth to the advowson, if the disseisee enter into the mannor, the advowson is recontinued againe, which was severed by the usurpation. And so it is if tenant in tayle be of a mannor whereunto an advowson is appendant, the tenant in taine continueth in fee, the disconvineth granteth away the advowson in fee, and dieth, the issue in tayle recontinued the mannor by recuperie, he is thereby remitted to the advowson; and in both cases hee that right hath shall present when the church becommeth voyd.

The patron of a benefice is outlawed, and the church becommeth voyd, an estranger usurpeth, and six moneths passe, the king doth recover in a quare impedit, and remove the incumbent, &c. the advowson is recontinued to the righfull patron. And so note a diversitie betweene a recontinuance and a remitter; for a remitter cannot be properly, unlesse there be two titles; but a recontinuance may be where there is but one.

"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 foecoffment in fee, whereunto liverie of seisin is requisite; yet the deed indented shall not suffer the liverie made according to the forme and effect of the indenture, to worke any remitter to the disseisee, but shall estop the disseisee to claim his former estate; and if the disseisor upon the foecoffment doth reserve 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 poll, is, for that the deed poll is only the deed of the foecoffor, donor, and lessor; but the deed indented is the deed of both parties, and therefore aswell the taker as the giver is concluded.

"Ou per record." As by fine, deed indented, and inrolled, and the like.

† repren—ent pret, L. and M. and Roh. &c. not in L. and M. nor Roh.
† un—bon, L. and M. and Roh.
ITEM, si home lessa terre pur terme de vie a un auter, le quel aliena a un auter en fee, et l'alienee fait estate a le lessor, ceo est un remitter al lessor, pur ceo que son entrie fuit congeable, &c.

This is evident enough upon that which hath beene said.

ITEM, si home soit disseisie, et le disseisor lessa la terre al disseisie per fait pol, ou sans fait, pur terme des ans, per que le disseisee entrera, cest entre est un remitter a le disseisee. Car en tiel case lou l'entree d'un home est congeable, et un lease est fait a luy, comen que il clama per parolx en paits, que il ad estate per force de tiel lease, ou dit ovetment, que il ne clama riens en la terre sinon per force de tiel lease, uncore ceo est un remitter a luy, sar tiel n'ad disclaimer en le paits n'est riens a purpose. Mes s'il n'ad estate forisque per force de tiel lease, et nemy aumient, donc que il est conclude, &c.

HERE appeareth a diversitie betweene a claime in paitis of an estate, and a claime of record, for a claime in paitis shall not hinder a remitter. Otherwise it is of a claime of record, because that doth worke a conclusion.

ITEM, si deux joyntenants seisc de certaine tenements en fee, l'un estant le pleine age, l'autre deins age, sont

&c. not in L. and M. nor Roh.
† disclaimer—clayme, L. and M. and Roh.
n'ad—ad, L. and M. and Roh.
Of Remitter.

sont disseisies, &c. et le disissor morust seisie, et son issue entra, l'un de les joytenants estecnt adonques deins age, et apres que il vient a l'pleine age, l'heir le disissor lessa les tenements a memies les joytenants pur terme de leur + deux vies, cee est un remitter (quant al moitie) a celtuy que fust deins age, pur cee que il est seisie de cest moitie que affictra a luy en fee, pur cee que son entre fut congeable. Mes l'aouter jointenaut n'ad en l'aouter moitie force estate pur terme de sa vie per force de le lease, pur cee que son entre fuit tolle, &c.

within age, bee disseisied, &c. and the disissor die seised, and his issue enter, the one of the joytenants being then within age, and after that he commeth to full age, the heire of the disissor letteth the tenements to the same joytenants for terme of their two lives, this is a remitter (as to the moitie) to him that was within age, because he is seised of the moitie which belongeth to him in fee, for that his entry was congeable. But the other joytenant 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.

HERE note a diversitie worthy the observation, that where joytenants or coparceners have one and the same remedie, if the one enter, the other shall enter also: but where remedies bee severall, there it is otherwise. As if two joytenants or coparceners joynye in a real action, where their entry is not lawfull, and the one is summoned and severed, and the other pursueth and recovereth the moitie, the other joytenant or coparcener shall enter and take the profits with her, because their remedie was one and the same. But where two coparceners be, and they are disseised, and a discent is cast, and they have issue and die, if the issue of the one recover her moitie, the other shall not enter with her, because their remedies were severall: and yet when both have recovered, they are coparceners againe. So here in this case that Littleton putteth, the two joytenants have not equall remedie; for the infant hath a right of entry, and the other a right of action; and therefore the infant being remitted to a moitie, the other shall not enter and take the profits with her.

If A. and B. joytenants in fee, be disseised by the father of A. who dieth seised, his sonne and heir entreth, he is remitted to the whole, and his companion shall take advantage thereof. Otherwise here in the case of Littleton, for that the advantage is given to the infant, more in respect of his person than of his right; whereof his companion shall take no advantage. But if the grandfather had disseised the joytenants, and the land had descended to the father, and from him to A. and then A. had died, the entry of the other should be taken away by the first discent; and therefore he should not enter with the heire of A.

But here in the case of Littleton, if after the discent the other joytenant had died, and the infant survived, some say that he should have entered into the whole, because he is now, in judgement of law, solely in by the first seoffment, and he claimeth not under the discent.

* &c. not in L. and M. nor Roh.  
† deux not in L. and M. nor Roh.

CHAP. 13.

Of Warrantie.

LT est communement dit, que trois garanties y sont, scilicet, garran-
tie lineal, garantie collaterall, et garantie que commence per disseisin. Et
est ascovoir, que devant l’estatute de Gloucester tous garanties queux dis-
cendont a eux queux sont heires a eux
queux fesoyent les garanties, furent
barres a mesmes les heires a demander
ascens terres ou tenements encounter
les garanties, foreprise les garanties
queux commencèrent per dissei-
sin; car tel garrante ne fuit unque
barre al heire, pur cee que le gar-
antee commence per tort, scilicet, per
disseisin.

Vide Sect. 338.
(331.
(Vaughan 378.)
(1 Resp. L)

Bract. lib. 2.
fol. 37. Lib. 2.
fol. 389, 381, etc.
Glanvill. lib. 2.
exp. 1, 2, 3.
Lib. 2, exp. 5, 5.
Lib. 6, exp. 4.
Briotan ca. 185.
fol. 269, 280, etc.
Et fol. 48, 100, b.
106, 197.
Fleta lib. 6, exp. 12.

("I L est communement dit:" Here by the opinion of Littleton,
communes opinio is of authority, and stands with the rule of
law, A communes observantia non est recedendum: and
againe, Minimì mutanda sunt que certam habuerunt in-
terpretationem.

Here our author beginneth this Chapter with an exact division
of warranties. A warrantie is a covenant reall annexed to lands
or tenements, whereby a man and his heires are bound to warrant
the same; and either upon voucher, or by judgement in a writ of
warrantia cartis, to yeeld other lands and tenements (which in old
books is called in excambio) to the value of those that shall bee
evicted by a former title, or else may bee used by way of rebut-
ter. (1)


("Rebouter," is a French word, and is in Latine repellere, to
repell or barre; that is, in the understanding of the common law,
the action of the heire by the warrantie of his ancestor; and this
is called to rebut or repell. [c] Briton saith, Garrantie en un
sence signifie a defender son tenant en sa seisin, et en auter sense
signifie que si il ne defende que le garrant lui, soit tenue a es-
changes, et de faire son gree a la vaillancce. [d] Bracton saith,
Warrantizare nihil aliud est, quam defendere et acquietare tenen-
tem qui warrantum vocavit in seisinà sud. [e] Fleta saith,
Warrantizare nihil aliud est quam possidentem vocantem defendere et
acquietare in sud seisinà vel possessionem erga vetentem, &c. et tenens
s de re warranti excambium habeit ad valentiam.

It is to be observed, that there be two kinde of warranties,
that is to say, warrantia expressa et tacita, vulgarly said warrantie
in deed, because they be expressed; and warranties in law, because
the law doth tacitely imply them. And this division of warranties that

1) [See Note 315.]
that Littleton here speaketh of, he intendeth of warranties in deed.
And of warranties in law, more shall be said hereafter in this Chapter. As for promises or contracts annexed to chattels real or personal, they are not intended by our author in his said division, but only warranties concerning freeholds and inheritances.

"Devent le statutte de Glocester." This statute was made at a parliament holden at Glocester in the sixth yeare of the reigne of King E. 1. and therefore it is called the statute of Glocester.

"Sunt barres a mesmes les heires a demander aucune 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 Edward 1.) when all states of inheritance were fee simple. But after the statute of 13 Edward 1. the heire in tayle is not barred by the warrantie of his ancestour, unless there be assets, as shall be said hereafter more largely in this Chapter.

By the statute of Glocester fourre things are enacted.
First, that if a tenant by the courteous 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 descend to the heire from the father, he shall be barred, having regard to the value thereof.

Secondly, that if the heire, for want of assets at that time descended, both recover the lands of his mother by force of this act, and afterwards assets descend to the heire from the father, then the tenant shall recover against the heire the inheritance of the mother by a writ of false judgement, which shall issue out of the record, to resumption 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 descent.

Thirdly, that the issue of the sonne shall recover by a writ of cosinage, aiel, and besaile.

And lastly, that the heire of the wife, after the death of the father and mother, shall not bee barred of his action to demand the heritage of the mother by writ of entry, which his father aliened in the time of his mother, whereof no fine was levied in the king's court.

Concerning the first, there be two points in law to be observed.
First, albeit the statute in this article name a writ of mordancester, and after writs of cosinage, aiel, and besaile [c] ; yet a writ of right, a formedon, a writ of entry ad communem legem, and all other like actions, are within the purvieu of this statute; for those actions are put but for examples.

Secondly, where it is said in the said act (if the tenant by the courteous alien), yet this release with warrantie to a diseseior, &c. is within the purview of the statute, for that it is in equall mischiefe; and if that evasion might take place, the statute should have beene made in vain.

If tenant by the courteous be of a seigniorie, and the tenancie escheate unto him, and after he alieneth with warrantie, this shall not
not bind the issue, unless assets descend; for it is in equall mischief. But notwithstanding this statute, if a female tenant in dower had aliened in fee with warranty and died, the warranty had bound the heir until the statute [s] of 11 H. 7. since our author wrote: by which statute the heir may enter, notwithstanding such warranty.

But note, there is a diversite betweene a warranty on the part of the mother, and an estoppel; for an estoppel of the part of the mother shall not bind the heir, when hee claimeth from the father: as if lands bee given to the husband and wife, and to the heires of the husband, the husband make a gift in taile, and dieth, the wife recovereth in a *cut in vitid* against the donee, supposing that she had fee simple, and make a *fermement* and dyeth, the donee dyeth without issue, the issue of the husband and wife bring a *forme don* in the revertere against the feoffee; and notwithstanding that he was heire to the estoppel, and the mother was estopped, yet for that he claimed the land as heir to his father, hee was not estopped.

Note, that warranties are favoured in law, being part of a man’s assurance; but estoppells are odious.

If a female heire of a disseisor infeoffith me with warranty, and marrieth with the disseissee, if after the disseissee bring a *praeipe* against me, I shall rebut him, in respect of the warranty of his wife, and yet he demandeth the land in another’s 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 remainder or reversion to her next heir, and the woman had aliened in fee and died, this warranty had barred her heir in remainder or reversion; 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 given to her by any of the ancestors of the husband, or by any other person seised to the use of her husband, or of any of his ancestors, there her alienation release, or confirmation with warranty, shall not bind the heir.

To the authorities quoted in the margent, which may serve as commentators upon the said statute, I will only addde two cases. The one was [*] A man seised of lands in fee levied a fine to the use of himselfe for life, and after to the use of his wife, and of the heires males of her body by him begotten for her jointure, and had issue male, and after he and his wife levied a fine, and suffered a common recovery, the husband and wife died, and the issue male entred by force of the said statute of 11 H. 7. And it is holden by the justices of assise (the case comming downe to be tried 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 she neither levied the fine, &c. being sole, or with any other after-taken husband, but is by herselfe with her husband that made the joynture. *Sed qui harret in literâ harret in coriic*; and this case being in the same mischief, is therefore within the remedy of the statute, by the intendment of the makers of the same, to avoid the disherson of heires who were provided for by the said joynture, and especially by the
the husband himself that made the joyneture, which (as it was said) is a stronger case than the example set downe in the statute. The other was, [g] A man is seised of lands in the right of his wife, and they two leie a fine, and the conusey grant and rendereth the land to the husband and wife in speciall tayle, the remainder to the right heires of the wife, they have issue, the husband dyeth, the wife taketh another husband, and they two leve 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 moved 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 conveyance of any other, her alienation with warrantie shall binde the heire at this day. So if a man bee tenant for life (otherwise than as tenant by the courtesie) and alien in fee with warrantie, and dieth, this shall at this day binde the heire that hath the reversion or remainder by the common law not holpen by any statute. But all this is to be understood, unlessse the heire that hath the reversion or remainder doth avoid the estate so aliened in the life of the ancestour; for then the estate being avoided, the warrantie being annexed unto the estate, is avoided 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 he hath notice or probable suspicion of such an alienation.

As to the second clause of the statute of Glocester, there are two points of law to be observed. First, that by the express purview of the statute, if assets doe after descend from the father, then the tenant shall have recovery or restitution of the lands of the mother. But in a formedon, if at the time of the warrantie pleaded no assets be descended, whereby the demandant recovereth, if after assets descend, then the tenant shall have a scire facias for the assets, and not for the land intailed. And the reason hereof is; that if in this case the tenant should be restored to the land intailed, then if the issue in taile aliened the assets, his issue should recover in a formedon; and therefore the sages of the law, to prevent future occasions of suits, resolved the said diversitie in the cases abovesaid, upon consideration and construction of the statute of Glocester, and of the statute de donis conditionibus.

Secondly, it is to bee observed, that after assets descended, the recoverie shall bee by writ of judgement, which shall issue out of the rolle of the justices, &c. And here two things are to be declared and explained. First, by what writ, &c. and that is cleere, viz. by scire facias. But the second is more difficult; and that is, upon what manner of judgement the scire facias is to be grounded: for explanation whereof it is to be understood, that if the tenant will have benefit of the statute he must plead the warrantie, and acknowledge the title of the demandant, and pray that the advantage of the statute may bee saved unto him, and then if after assets descend, the tenant upon this record shall have a scire facias: and if assets descend but for part, he shall have a scire facias for so much. But if the tenant plead the warrantie, and plead further that assets descended, &c. and the demandant taketh issue that assets descended not, &c. which issue is found for the demandant, whereupon
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upon he recovereth, the tenant, albeit assets doe after dissolved, shall never have a *vice facias* upon the said judgement; for that by his false plea he hath lost the benefit of the said statute.

Touching the third, sufficient hath beene spoken before. For the last, it is to be observed, that if the husband be seised of lands in the right of his wife, and makest a feuissance in fee with warrantie, the wife dieth, and the husband dieth, this warrantie shall not abide the heir of the wife without assets, albeit the husband be not tenant by the curtesy. But of this you shall read more hereafter.

In the mean time know this, that the learning of warranties is one of the most curious and cunning learnings of the law, and of great use and consequence. (1)

"A demander acquit terres ou tenements." A warrantie may not only be annexed to freeholds, or inheritances corporeall, which pass by livery, as houses and lands, but also to freeholds or inheritances incorporeall, which lye in grant, as advowsons; and to rents, commons, estovers, and the like, which issue out of lands or tenements. And not only to inheritances in esse, but also to rents, commons, estovers, &c. newly created. As a man (some say) may grant a rent, &c. out of land for life, in tye, or in fee with warrantie; for although there can be 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 avoided by the recovery of the land; in which case the grantee may help himselfe by a *warrantia carta*, upon the especiall matter. And so a warrantie in law may extend to a rent, &c. newly created; and therefore if a rent newly created be granted in exchange for an acre of land, this exchange is good, and every exchange implyeth a warrantie in law. And so a rent newly created may be granted for oweltie of partition.

A man seised of a rent secketh issuing out of the manner of Dale, taketh a wife, the husband releaseth to the terre. [366. b.] tenant, and warranteth tenementa predicta, and dieth, the wife bringeth a writ of dower of the rent, the terre-tenant shall vouch, for that albeit the release enured by way of extinguishment, yet the warrantie 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 warrantie created, are warranted also.

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**GARRANTY** que commence per disseisin est en tiel forme: si- come lou il est pier et fis, et le fis purchase terre, &c. et lesa mesma la terre

**WARRANTIE** that commences by disseisin is in this manner: as where there is father and son, and the sonne purchaseth land, &c.

(1) Upon the alterations made by the statute law in the doctrine of warranty, see note 1. 373. b.
Of Warrantie.

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terre a son pier pur terme d'ans, et pier per son fait est en seoffa un auster en fee, et oblige lui et ses heires a garrancy, et le pier devoxy, per que le garranty descendent al fils, cec garranty ne barrera my le fils; car niuent obstant cel garranty le fils poiit bien enter in la terre, ou aver un assise envers l'alience s'il voit, pur cee que le garranty commence per disseisin; car quanct le pier que n'avoi estate forseque pur terme des ans, est un seoffement en fee, cee fuit un disseisin al fils del franktenement que adonques fuist en le fils. En mesme le maner est, si le fils lessa a le pier la terre a tener a volunt, et puis le pier fuit un seoffement ove garranty, &c. Et sicome est dit de pier, issint poit estra dit de chescun auer ancetuer, &c. En mesme le maner est, si tenuant per elegit, tenuant per statute merchant, ou tenant per statute de le staple, faict seoffement en fee ovesque garranty, † cee ne barrera my l'heire que doit aver la terre, pur cee que tiels garranties commen- cercent per disseisin.

"GARRANTY que commence per disseisin, &c." (1) It is called a warranty that commenceth by disseisin, because regularly the conveyance whereunto the warranty is annexed doth worke a disseisin.

In this Section Littleton putteth five examples of a warrantie 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, have foure qualities.

First, that the disseisin is done immediately to the heire that is to be bound; and yet if the father bee tenant for life, the remainder to the sonne in fee, the father by covine and consent maketh a lease for yeares, to the end that the lessee shall make a feoffment in fee, to whom the father shall release with warrantie, and all is executed accordingly, the father dyeth, this warrantie 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 parsicpe crimine.

† &c. added L. and M. and Roh.

(1) [See Note 316.]

34 E. 3. 36. Garnante 88. (b Rep. 80. a.)
(2 Roll. Ab. 779. 773. Amt. 82. a. 85. a. 171. a. 17b. a. P. K. B. 14b. 6.)

(Cro. Can. 483.)

[367. a.] criminis. So it is if one brother make a gift in tayle to another, and
the uncle disseise the donee, and infooth another with warrantie, the
uncle dieth, and the warrantie descendeth upon the donor, and
then the donee dyeth without issue, albeit the disseisin
was done to the donee and not to the donor, yet the war-
rantie shall not binde him. The father, the sonne, and a third per-
son are joynetens in fee, the father maketh a feoffment in fee of the
whole with warrantie, and dieth, the sonne dieth, the third
person shall not only avoid the feoffment for his owne part, but
also for the part of the sonne; and he shall take advantage that the
warrantie commenced by disseisin, though the disseisin was done to
another.

The second qualitie appearing in Littleton's examples is, that
the warrantie and disseisin are simul et 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 feoff-
ment many years after the disseisin, notwithstanding because the
warrantie was done to that intent and purpose, the law shall adjudge
upon the whole matter, and by the intent couple the disseisin and
the warrantie together.

The third qualitie is, that the warrantie that commenceth by dis-
seisin by all these examples (if it should binde) should binde as a col-
laterall warrantie, and therefore commencing by disseisin shall not
binde at all.

"Ne barrera myle heire, &c." For by the authoritie of our author
himselfe, a lessee for yeares may make a feoffment, and by his feoff-
ment a fee simple shall passe; so as albeit as to the lessor it work-
eth by disseisin, yet betweene the parties the warrantie annexed to
such estate standeth good; upon which the feeoffee may vouch the
feoffor or his heires, as by force of a lineall warrantie. And therefore
if a lessee for yeares, or tenant by elegit, &c. or a disseissor in-
continent make a feoffment in fee with warrantie, if the feeoffee be
impleaded, hee shall vouch the feoffor, and after him his heire
also; because this is a covenant reall, which binde him and his
heires to recompence in value, if they have assets by descent to re-
compence; for there is a feoffment de facto, and a feoffment de jure:
[*] and a feoffment de facto made by them that have 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 mer-
chant, or staple or by elegit of the tenancie, and make a feoffment in
fee, hee hereby doth extinguish his signiorie, although having re-
gard to the lessor it is a disseisin.

The fourth qualitie is a disseisin; but that is put for an example;
and the rather, for that it is most usual and frequent; but a war-
rantie 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 than a
warrantie that commenceth by disseisin, because all doe com-
ence by wrong. And so it is if the tenant dieth without heire, and
an ancestor of the lord enter before the entrie of the lord, and
make a feoffment in fee with warrantie, and dieth, this warrantie
shall
Of Warrantie.  

shall not binde the lord, because it commenceth by wrong, being in nature of an abatement. *Et sic de similibus.* (1)

Sect. 699.

ITEM, si gardein en chivalrie, ou gardein en socage, fait un feoffement en fee, ou en fee taile, ou pur terme de vie, ouesque garrantie, &c. tiels garranties ne sont pas barres a les heires as queux les terres seront descendus, pur ceo que ils commence per disseisin.

HERE Littleton addeth the case of gardeine in chivalrie, and gardeine in socage, and gardeine because nurture is also in the same case.

ALSO, if a gardeine in chivalrie, or gardeine in socage, make a feoffment in fee, or in fee taile, or for life, with warrantie, &c. such warranties are not barres to the heyres to whom the lands shall bee descended, because they commence by disseisin.

Sect. 700.

ITEM, si le pier et les fits purchase certaine terres ou tenements, a aver et tener a eux joynment, &c. et puis le pier alien *l'entier a un auter, et oblige luy et ses heires a garrantie, &c. et puis le pier devie, cel garrantie ne barrera my le fits de le moitie que a luy afferit de les dits terres ou tenements, pur ceo que quant a cel moitie que afferit a le fits, le garrantie commence per disseisin, &c.

ALSO, if father and sonne purchase certaine lands or tenements, to have and to hold to them joyntly, &c. and after the father alien the whole to another, and binde him and his heires 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.

"AVER et tener a eux joynment, &c." This is to bee intended of a joynit purchase in fee; for if the purchase were to the father and the sonne, and the heires of the sonne, and the father maketh a feoffment in fee with warrantie, if the sonne entret in the life of the father, and the feoffee re-enter, the father dieth, the sonne shall have an assise of the whole: and so is the booke of 23 H. 6. to be understood. But if the sonne had not entred in the life of the father, then for the father's moitie it had beene a barre 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 sonne's moitie; and so a warrantie defeated in part, and stand good in part. And this appeareth by

* l'entier—l'entierte, L. and M. and Roh.

(1) [See Note 317.]
by the example that Littleton hath put. But if the purchase had beene to the father and sonne, and to the heires of the father, then the entrie of the sonne in the life of the father, as to the avoynance of the warrantie, had not availed him, because his favor lawfully conveyed away his moiety. (1)

If a man of full age and an infant make a feoffment in fee with warrantie, this warrantie is not void in part, and good in part; but it is good for the whole against the man of full age, and void against the infant: for albeit the feoffment of an infant passing by livery of seizin be vovyable, yet his warrantie, which taketh effect only by deed, is meerely vovy.

Sect. 701.

ITEM, si A. de B. soit seise d'un mese, et F. de G. que nul droit ad d'entrer en mesme le mese, clamaunt mesme le mese, a tener a buy et a ses heires, entra en mesme le mese, mes le dit A. de B. adonquc est continuallement demuarrant en mesme le mese: en cest cas le possession de franktenement serrera tout temps adjudge en A. de B. et nemy en F. de G. pur ceo que en tict case lou deux sont en un mese, ou autres tenements, et l'un clama per l'un title, et l'auter per l'auter title, la ley adjudivera celuy en possession que ad droit d'aver le possession de mesmes les tenements. Mes si en le case avartit, le dit F. de G. fait un feoffment a certaine barretors et extortioners en le pais, pur maintenance de eux azer de mesme le mese, per un fait de feoffment ovr garranty per force de quel le dit A. de B. ne osast pas demuarrer en le mese, mes * alast hors de le mese, cest garranty commence per dissiperi, pur ceo que tict feoffment fuit la cause que le dit A. de B. recluistit le possession de mesme le mese] 

A LSO, 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 said mese, to hold to him and to his heires, entreat into the sayd mese, but the same A. of B. is then continually abiding in the same mese: in this case the possession of the freehold shall bee always adjudged 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 shall adjudge him in possession that hath right to have the possession of the same tenements. But if in the case aforesayd, the sayd F. of G. make a feoffment to certaine barretors and extortioners in the country, to have maintenance from them of the sayd house, by a deed of feoffment with warrantie, by force whereof the said A. of B. dare not abide in the house, but goeth out of the same, this warrantie commenceth by disesain, because such feoffment was the cause that the sayd A. of B. relinquished the possession of the same house.

LO deux sont en un mese, &c. et l'un clama per l'un title, et "l'auter per auter title, &c." For the rule is, Duo non possunt in solido unam rem possidere.

These

* as en added L. and M. and Boh.

† &c. added L. and M. and Boh.

(1) [See Note 318.]
Of Warrantie.

These words of our author be significant and materiall: [a] for if a man hath issue two daughters, bastard eigne and mulier puisne, and die seised, and they both enter generally, the sole possession shall not be adjudged only in the mulier, because they both claim by one and the same title; and not one by one title, and the other by another title, as our author here saith.

[7] If the tenant in an assise of an house desire the plaintiffs to dine with him in the house, which the plaintiff doth accordingly, and so they bee both in the house; and in truth one pretendeth one title, and the other another title; yet the law in this case shall not adjudge the possession in him that right hath; because our author here saith, hee claimed not his right, and it should be to his prejudice if the law should adjudge him possession; and a trespasser hee cannot bee, because hee was invited by the tenant in the assise.

"Barretors." A barretor is a common mover and excitor, or maintainer of suits, quarrels, or parts, either in courts or elsewhere in the country. In courts, as in courts of record, or not of record; as in the countie, hundred, or other inferior courts. In the country in three manners: first, in disturbance of the peace: secondly, in taking or keeping of possessions of lands in controversie, not only by force, but also by subtittie and a deceit, and most commonly in suppression of truth and right: thirdly, by false inventions, and sowing of calumnations, rumors, and reports, whereby and disquiet may grow betweene neighbours.

"Barretor" is derived of this word (barret) which signifieth not only a wrangling suit, but also such brawles and quarrels in the countrey as are aforesaid.

"Extortioners." Extortion, in his proper sense, is a great mistrision, by wresting or unlawfully 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 ultra debitum, vel ante tempus quod est debitum: for this is to be known, that it is provided by the [7] statute of W. 1. that no sheriffe, nor any other minister of the king, shall take any reward for doing of his office, but only that which the king alloweth him, upon paine that hee shall render double to the partie, and be punished at the king's pleasure. And this was the antient common law, and was punishable by fine and imprisonment; but the statute added the aforesaid penaltie. But some latter statutes having permitted them to take in some cases; by colour ofer thereof the king's officers and ministers, as sheriffes, coroners, escheatours, seadaries, 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 have allowed unto them. But yet such reasonable fees as have been allowed by the courts of justice of antient time to inferior ministers and attendants of courts for their labour and attendance, if it be asked and taken of the subject, is no extortion.

And all this was resolved [n] by the whole court of king's bench, betweene Shurley plaintiffe, and Packer deputie of one of the sheriffs of London, in an action upon the case in the king's bench.

See the Indemnament of a common Barretor. W. 1. cap. 18 & 36. 40 El. 3. 53. Lib. 8. fol. 36 b. Case de Barretor. (3 Inst. 172.) Sutherl. 258. 3 Roll. Abr. 363. (1 Rolle. Abr. 363.)


P. Com. fol. 64. Lib. 10. fol. 104. Beauchef's case. (3 Inst. 169.)


(Frowd. 465.) Nov. 111. 2 Roll. Abr. 32.)


[a] 17 El. 2. 29. Am. p. 53. (Perk. 84. 5 Rep. 101 b. Hob. 120. Ant. 189. 344. 10 H. p. Lamper's case.)

[b] Pl. Com. 91. the Parson of Ho- nore Lute's case. (Ant. 244 b. Plowd. 93 a. b.)

Of Warrantie.

See the statutes of 21 H. 8. cap. 5. setting down the fees of ordinaries, registers, and other officers, in certain cases, and many other statutes; as for example, the statute of 19 H. 7. cap. 5. 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.

Of this crime it is said, that it is no other than robbery: and another saith, that it is more odious than robbery; for robbery is apparent, and hath the face of a crime; but extortion puts on the visage of vertue, for expedition of justice, and the like; and it is ever accompanied with the grievous name of perjury.

But largely extortion is taken for any oppression by extort power, or by colour or pretense of right; and so Littleton taketh it in this place. Extorsio is derived from the verbe extorsuere; and it is called crimen expiationis; and here barrators and extortioners are put but for examples; for if the seffesment be made to any other person or persons, the law is all one.

"Par maintenance de eux over." Maintenance, mantenentia, is derived of the verbe mantenere, and signifies in law a taking in hand, bearing up or upholding of quarrels and sides, to the disturbance or hindrance of common right; Culps est vivre ou inmancere ad se non pertinenti; and it is twofold, one in the countrey, and another in the court. For quarrels and sides in the court [v] the statutes have inflicted grievous punishments. But this kind of maintenance of quarrels and sides in the countrey is punishable only at the suit of the king, [v] as it hath beene resolved. And this maintenance is called mantenentia, or mantenentia ruralis, for example, as to take possessions, or keepe possessions, whereas Littleton here speaketh, or the like. (1)

The other is called curialia, because it is done pendente pleito in the courts of justice; and this was an offence at the common law, and is threefold.

First, to mainaine to have 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.

The second is, when one maintaine the one side, without having any part of the thing in plea, or suit; and this maintenance is twofold, general maintenance, and special mainte-

nence; whereas you shall resde at large in our bookes, which were too long here to be inserted.

The third is when [u] one laboureth the jury, if it be but to appear, or if he instruct them, or put them in feare, or the like, he is a maintainer, and he is in law called an embracor, and an action of maintenance lyeth against him; and if he take money, a devies tantum may be brought against him. And whether the jurie passe for his side or no, or whether the jury give any verdict at all, yet shall he be punished as a maintainer or embracor either at the suit of the king or partie.

(1) [See Note 319.]
Of Warrantie.

Here in this case that Littleton putteth, the feoffement is void by the statute [a] of 1 R. 2.; for thereby it is enacted, that feoffements made for maintenance shall be holden for none, and of no value, so as Littleton putteth his case at the common law; for he seemeth to allow the feoffement, where he saith, tiet feoffment sitit le cause, &c.; but some have said that the feoffement is not voide betwecne the seeffor and seoffee, but to him that right hath.

Now, since Littleton wrote, there is a notable statute [b] made in suppression of the causes of unlawfull maintenance (which is the most dangerous enemie that justice hath), the effect of which statute is,

First, that no person shall bargaining, buy, or sell, or obtaine any pretenced seeffor or seoffee.

Secondly, or take, promise, grant, or covenant to have any right or title of any person in or to any lands, tenements, or hereditaments; but if such person which so shall bargaining, &c. their ancestors, or they by whom he or they claime the same, have beene in possession of the same, or of the reversion or remainder thereof, or taken the rents or profits thereof by the space of one whole yeare, &c. upon 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, provided that it shall be lawfull for any person, being in lawful possession, by taking of the yearely farme, rents or profits, to obtaine and get the pretenced right or title, &c. of any lands whereof he or they shall be in lawful possession.

For the better understanding of which statute, you must observe, that title or right may be pretenced two manner of wayes:

First, when it is meerely in pretence or supposition, and nothing in verity.

Secondly, when it is a good right or title in verity, and made pretenced by the act of the partie; and both these are within the said statute: for example, if A. be 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 be meerely void) are within the danger of the statute; for B. hath no right at all, but only in pretence. If A. be diseised 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, he hath now made his good right of entrie pretended within the statute, and both the grantor and grante within the danger thereof. A. fortiori of a right in action. *Quod nota.*

It is further to be knowne, that a right or title may be 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 either *jus proprietatis, or jus possessionis.* The third, when he hath a good right, and a wrongfull possession. As to the first, somewhat hath beene said, and more shall be said hereafter. As to the second, taking the former example, if A. be diseised, and the diseissee release unto him, he may presently sell, grant, or contract for the land, and need not tarrie a yeare; for it is a rule upon this statute, that whosoever hath the absolute ownership of any land, tenements, or hereditaments (as in this

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[b] 23 H. 2. cap. 9.
this case the disseisor hath, there such over may at his pleasure bargain, grant, or contract for the land, for no person can thereby be prejudiced or grieved. And so if a man mortgage his land, and after release the same; or if he may recover land upon a former use, or be removed to an ancient right, he may at any time bargain, grant, or contract for the land, for the reason aforesaid. As it is said, if in the case aforesaid the disseisor dieth seized, and A. the disseisor extant, and dispose the heire of the disseisor, and that he hath an ancient right, yet seeing the possession is unlawful, if he bargain or contract for the land before he hath beene in possession by the space of a yeare, he is within the danger of the statute, because the heire of the disseisor hath right to the possession, and he is thereby grieved, et sic de similibus; and where he that hath a pretended right (and none in verity) getheth the possession wrongfully, yet the statute extendeth unto him aswell as where he is out of possession.

Note, the words of the statute be (any pretended right), therefore a lease for yeares is within the statute; but (any right), and the offender 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. [2] But yet if a man make a lease for yeares to another to the intent to trie the title in an ejectio si fera, is that out of the statute, because it is in a kinde of course of law; but if it be made to[369. b.] a great man, or any other to sway or countenance the cause, that is within this statute.

Also the statute speakes (of any right or title to any land, &c.) [3] A customary right, or a pretence thereof to lands holden by copie, is within this statute.

The said proviso (which is rather added for explanation, than of any necessities) extendeth only to a pretended right or title; and to a good and certaine right; and therefore without question, any that hath a just and lawful estate may obtaine any pretended right by release or otherwise; for that cannot be to the prejudice of any: may, 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 proviso to protect him.

And therefore [4] if there be tenant for life, the remainder in fee by lawfull and just title, he in the remainder may obtaine and get the pretended right or title of any stranger, not only for that the particular estate and the remainder are all one, but for that it is a meane to extinguish the seeds of troubles and suits, and cannot be to the prejudice of any, as hath beene said. And where the statute saith, (being in lawfull possession by taking the yearely rent, &c.) those words are but explanatory, and put for example; for howsoever he be lawfully seised in possession, reversion, or remainder, it sufficeth though he never tooke profit. But the matter observable upon this proviso, which is worthy of observation, is, that if a disseisor make a lease for life, lives, or yeares, the remainder for life, in tayle, or in fee, he in remainder cannot take a promise or covenant, that when the disseissee hath entered upon the land, or recovered the same, that then he should convey the land to any of them in remainder, thereby to avoid the particular estate, or the interest or estate of any other; for the words of the proviso be (buy,
Lib. 3.

Of Warrantie.

Sect. 702.

(buy, obtaine, get, or have by any reasonable way or meane) and that is not by promise or covenant to convey the land after entry or recovery; for that is neither lawfull, being against the express purview of the body of the act, and not reasonable, because it is to the prejudice of a third person. But the reasonable way or meane intended by the statute, is by release or confirmation, or such conveyances as amount to as much; and this agreeith with the letter of the law, viz. the pretended right or title of any other person; and rights and titles are by release or confirmation, as by reasonable wavys and meanes lawfully transferred and extinct: and the words of promise or covenant, &c. which are prohibited by the body of the act, are omitted in the proviso.

"Relinquant le possession, &c." This must be understood, that before livery of seisin upon the foemement, A. de B. departed out of the house; for otherwise the livery and seisin should be void, because A. de B. was in possession. And Littleton here saith, per un
fait de foemement, so as albeit the deed were made before the departure it is not materiall; but the departure must be before the livery of seisin, for that doth worke the disseisin. And yet that which Lit
tleton saith is true, that the foemement was the cause that he relinquished his possession; for otherwise he would not have done it. But admit that A. de B. had departed for any other cause, yet if F. de G. enter and enoisse certaine barretors or extortioners, or any other with warrantie, this is a warrantie that commenceth by dis
seisin, for that the foemement worketh a disseisin.

Sect. 702.

ITEM, si home que nul droit ad
d'entrer en outers tenements, entra
en meennes les tenements, et incontin
uent ent fait un foemement en auters
per son fait ose garrantie, et deliver
en ce seisin, cest garrantie commence
per disseisin, par cee que le disseisin et
le foemement fueront faits quasi uno
tempore. Et que cee est ley, poiz
vien en un plee* M. 11 Ed. 3. en un
briefe of formedon en le reverter.

A LSO, if a man which hath no
right to enter into other te
ments, enter into the same te
ments, and incontinently make a
foemement thereo to others by his
deed with warrantie, and deliver to
them seisin, this warranty commence
by disseisin, because the disseisin and
foemement were made as it were at
one time. And that this is law, you
may see in a plee M. 11 E. 3. in a
writ of formedon in the reverter.

T HIS dothis explyne that which hath beene said before. And albeit Littleton useth the words (and incontinently thereof
make a foemement); and that in this case of Littleton the disseisin and foemement were made (quasi uno tempore), yet if the disseisin were made to the intent to make a foemement with warrantie, albeit the foemement be long after this (as hath beene said) is a
warrantie that commenceth by disseisin.

* M. 11.—anno xxi. L. and M. and Boh.

"Mich.
"Mich. 11 E. 3." This is mistaken, and should be [°] 31 E. 3.
and so is the original, which case you shall see in Master Fitzherbert's Abridgement, for there is no booke at large of that yeare.
Hereby you may perceive that learned men looke not only to the
cases reported, but unto records, as you may see Littleton did; for
Fitzherbert put this case in print long after, as elsewhere hath beene
shewed.

Sect. 703.

**G**ARANTY lineal est, lour
home seize de terres en fee, † fait
decoement per son, fait a un auter, et
oblige luy et ses heires a garranty, et
ad issue et morust, et le garranty discendist a son issue, cee est lineal gar-
 ranty. Et la cause par cee que † est
dit lineal garranty, n'est par cee que
le garranty discendist de le pier a son
heire; mes la cause est. par cee que si
nul tiet fait noc garranty fuiisait fait
per le pier, donque le droit de les tene-
ments descenderoit al heire, et l'heire
convercroit le discent de || son pier,
&c.

(1 Rep. 1.)

(Warranty lineall is, where
a man seised of lands in fee
maketh a feoffement by his deed to
another, and bindes himselfe and his
heires to warrantie, and hath issue
and die, and the warrantie descend
his issue, that is a lineal warrantie.
And the cause why this is calld
lineall warrantie, is not because the
warrantie descendeth from the fa-
ther to his heire; but the cause is,
for that if no such deed with war-
rantie had beene made by the father,
then the right of the tenements
should descend to the heire, and the
heire should convey the discent
from his father, &c.

(1) [See Note 390.]
put, the lineall or collaterall warranty doth binde the heire; and therefore the successor claiming in another right shall not be bound by the warrantie of any naturall ancestor. For which cause in a juris utrum brought by a parson of a church, the collaterall warrantie of his ancestor is no barre, for that he demandeth the land in the right of his church in his politike capacitie, and the warrantie descendeth on him in his naturall capacitie. [d] But some have holden, that if a parson bring an assise, that a collaterall warranty of his ancestor shall binde him; and their reason is, for that the assise is brought of his possession and seisin, and he shall recover the meane profits to his owne use: but seeing he is seised of the freehold, whereof the assise is brought in jure ecclesiæ, which is in another right than the warrantie, it seemeth that it should not be any barre in the assise. The like law is of a bishop, archdeacon, deane, master of an hospital, and the like, of their sole possessions, and of the prebend, vicar, and the like.

"Et oblige luæ et ses heires." [*] King H. 3. gave a mannor to Edmund earle of Cornwall, and to the heires of his body, saving the possibillitie of reverter, and died: the earle, before the statute of W. 2. capi. 1. de donis conditionibus, by deed gave the said mannor to another in fee with warrantie in exchange for another mannor, and after the said statute in the 28 yeare of E. 1. dieth without issue, leaving assets in fee simple; which warrantie and assets descended upon king E. 1. as cosin germaine and heire of the said earle, viz. son and heire of king Henry the third, brother of Richard earle of Cornwall, father of the said earle Edmund. And it was adjudged, that the king, as heire to the said earle Edmund, was by the said warrantie and assets barred of the posseibilitie of reverter, which he had expectant upon the said gift, albeit the warrantie and assets descended upon the naturall body of king E. 1. as heire to a subject; and king E. 1. claimed the said mannor, as in his reverter in jure corone in the capacity of his body politike, in which right he was seised before the gift. In this case, how by the death of the said earle Edmund without issue, the king’s title by reverter, and the warrantie and assets came together, and that the warrantie was collaterall, yet the king shall not be barred without assets, as a subject shall be; and many other things are to be observed in this case, which the learned reader will observe. (1)

Sect. 704.

CAR si soit pier et its, et le its purchase terres en fee, et le pier de cœo disseisit son its, et † aliena a un auer en fee yer son fait, et per mesme le fait oblige luæ et ses heires a garranter mesmes les tenements, &c. et le pier morust; ore est le its barre d’aver

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 deed, and by the same deed binde him and his heires to warrant the same tenements, &c. and

* terres—tenements, L. and M. and Rob.
† cœo added L. and M. and Rob.

(1) [see Note 521,]
Of Warrantie.

and the father dieth; now is the son barred to have the said tenements; for he cannot by any suit, nor by other mean of law, have the same lands by cause of the said warrantie. And this is a collateral warrantie; and yet the warrantie descendeth lineally from the father to the sonne.

Sect. 705.

MES par cee que si nul tiet fait orce garrantie ust erstre fait, le futs en nul maner puoisoit couvyer le title que il ad a les tenements de son pier a luy, entant que son pier n’aavoit aucun estate en droit en les tenements; par cee tiet garrantie est appel collaterall garrantie, entant que celuy que fist le garrantie est collateral a le title de les tenements: et cee est a tant a dire, que cestuy a que le garrantie diiscendist, ne puoisoit a luy convoyer le title que il ad de les tenements per my cestuy que fist le garrantie, en cas que nul tiet garrantie fuit fait.

BUT because if no such deed with warrantie had beene made, the sonne in no manner could convey the title which bee hath to the tenements from his father unto him, inasmuch as his father haue no estate in right in the lands; wherefore such warrantie is called collateral warrantie, inasmuch as he that maketh the warrantie is collateral to the title of the tenements: and this is as much to say, as hee to whom the warrantie descendeth, could not convey to him the title which bee hath in the tenements by him that made the warrantie, in case that no such warrantie were made.

HERE Littleton putteth an example, proving that it is not called lineall, because it descendeth lineally from the father to the son; for in this case the warrantie descendeth lineally, and yet is a collateral warrantie. In this example you must intend that the disseisin was not of intent to alien with warrantie to barre the sonne; but here the disseisin being done to the sonne, without any such intent, the alienation afterwards with warrantie doth barre the sonne; because that albeit the warrantie doth lineally descend, yet seeing the title is collateral, that is, that the sonne claimeth not the land as heir to his father, therefore in respect of the title it is a collateral warrantie. And thus doth Littleton agree [e] with the authority of our booke. So as the diversities do stand thus. First, where the disseisin and feoffement are uno tempore, and where at several times. Secondly, where the disseisin is with intent to alien with warrantie, and where the disseisin is made without such intent, and the alienation with warrantie afterwards made.
Of Warrantie. Sect. 706, 707.

Sect. 706.

ITEM, si soit aiel, pier, et fit, et leveiel soit disseisie, en que possession le pier releas per son fait ore garrantie, &c. et morust, et puis l'ail morust; ore le fits est barre d'aver les tenements per le garrantie del pier. Et cee est appel lineal garrantie, pur cee que si nul tiel garrantie fuit, le fits ne puissoit convoyer le droit de les tenements a tug.; ne monstre comen il est heire al aiel foroque per meane del pier.

ALSO, if there bee grandfather, father, and son, and the grandfather is dispossessed, in whose possession the father releaseth by his deed with warrantie, &c. and dieth, and after the grandfather dieth; now the son is barred to have the tenements by the warranty of the father. And this is called a lineall warrantie, because if no such warrantie were, the son could not convey the right of the tenements to him, nor shew how hee is heir to the grandfather but by means of the father.

HERE Littleton putteth an example where the son must claime 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.

And it is to be observed, that the warrantie in this case descended upon the son, before the descen 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, and 741.

"Pier release per son fait ore garrantie." [f] It is to be knowne, that upon everie conveyance of lands, tenements, or hereditaments, as upon fines, feoffments, gifts, &c. releases and confirmations made to the tenant of the land, a warrantie may bee made, al- [371. b.]beit hee that makes the release or confirmation, hath no right to the land, &c.; but some doe hold, that by release or confirmation, where there is no estate created, or transmutation of posses- sion, a warrantie cannot be made to the assignee.

ITEM, si home ad issue deux fits et est disseisie, et l'eigne fits releessa al disseisir per son fait ore garrantie, &c. et morust sans issue, et apres cee le pier morust, cee est un lineal garrantie al prisme fits, pur cee que coment que l'eigne fits morust en la vie le pier, encore pur cee que per possibilitie il puissoit estre, que il puissoit convoyer a ley le title del terre per son eigne frere.

ALSO, if a man hath issue two sonnes and is dispossed, and the eldest sonne releaseth to the disseisor by his deed with warrantie, &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 possibilitie it might have beene, that hee might convey.
Of Warranty

Sect. 708.

convey to him the title of the land by his elder brother, if no such warranty had been. For it might be, that after the death of the father the elder brother entered into the tenements and died without issue, and then the younger son shall convey to him the title by the elder son. But in this case if the younger son released with warranty to the disensor, and died without issue, this is a collateral warranty to the elder son, because that of such land as was the father's, the elder by no possibility can convey to him the title by means of the younger son.

Hence Littleton puts this example, where the heir that is to be barred by the warranty is not to make his descent by him that made the warranty, as in the case before; and yet because by possibility he might have claimed by the eldest son, if he had survived the father, and died without issue, and so the younger brother might by possibility have been heir to him, the warranty is lineall.

And here it is to be noted, that the warranty of the eldest son descended before the right descended; whereof more shall be said hereafter, Sect. 741.; and the opinion of Littleton in this case is held for law against the opinions in 35 E. 3. Gar. 73.

"Mea en tiel case le puisme fits release owe garrantie, &c." This warranty in this case is collateral to the eldest son, and to the issues of his body; but if the eldest son dieth without issue of his body, then the warranty is lineall to the issues of the body of the youngest; and so the warranty that was collateral to some persons, may become lineall to others.

Sect. 708.

ALSO, if tenant in taille hath issue three sons, and discontinueth the tayle in fee, and the middle son release by his deed to the discontinueth, and bindeth and his heirs to warrantie, &c. and after the tenant in taille dieth, and the middle son dieth without issue, now the eldest son is barred to have any recoverie by writ of formedon, because the warranty of the middle brother is collateral to him, inasmuch

*fits not in L. and M. nor Roh.  
†fits not in L. and M. nor Roh.
del taitie ascum discent per le mulnes, et pur eco c’est un collateral garran-
tie. Mes en cest cas si l’eigne fils de-
dieu sans issue, ore le puisne frere poit bien aver un breiue de formeden en le
discender, et recorera mesme le terre, pur eco que le garrantie del mulnes
est lineal at fils puisne, pur eco que il
puissoit estre que per possibilitie le
mulnes puissoit estre seised per force
del taitie apres la mort son eigne frere,
e donte le puissance frere puissoit con-
vezer son tite de discent per le mul-
nes.

HEREBY it also appeareth, that a warrantie that is collateral
in respect of some persons, may afterwards become lineall
in respect of others. Whereupon it followeth, ["] that a collateral
warrantie doth not give a right, but bindeth only a right so long as
the same continueth: but if the collateral warrantie be determined,
removed, or defeated, the right is revived. ["/] And yet in an as-
sise the plaintiff hath made his title by a collateral warrantie.


"Barre" is a word common aswell to the English as to the
French, of which commeth the nounne, a bar, barra. It signifieth
legally a destruction for ever, or taking away for a time of the ac-
tion of him that right hath. And barra is an Italian word, and sig-
nifieth barre, as we use it; and it is called a plea in barre, when
such a barre is pleaded. Here Littlicton puteth an example of a
barre of an estate taly by a collateral warrantie. It is to be observ-
ed, that in some cases an estate taly may be barred by some acts of
parliament made since Littlicton wrote; and in some cases an estate
taly cannot be barred, which might when Littlicton wrote have been
barred. For example, if tenant in taly leve a fine with procla-
manations according to the statute, this is a barre to the estate taly, but
not to him in reversion or remainder, if hee maketh his claime, or
pursue his action within five yeares after the state taly spent.

[6] 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 brode, the
father dieth, the eldest sonne leveth a fine with proclamations, and
dieth without issue; this shall barre the second sonne, for

372. b.) the remainder descended to the eldest.

If tenant in taly be diseised, or have a right of action, and the
tenant of the land levie a fine with proclamations, and five yeares
passe, the right of the estate taly is barred.

[6] If tenant in taly in possession, or that hath a right of entrie,
be attainted of high-treason, the estate taly is barred, and the
land is forfeited to the king; and none of those were barred when

Littleton

(Dr. and Stud. 183. b.)
["/] 61 An. 44.
24 IL. 8. tit.
Table. Br.
7 H. 5. 8. Lc.
Am. 347. 34 E. 3.
Dyke 59.
10 H. 6. 69.
21 H. 7. 40.
5 H. 7. 23.

4 H. 7. c. 84. 86.
38 H. 6. c. 36.
(10 Rep. 49.)

(Doc. Plac. 84)

[5] Dalston
8 RL. 8. 7. EL.
Vide Lib. 3.
fol. 84. le
case de Finca.
(3 Lcc. 10.)
(Am. 180. b.)
9 Rep. 104.
Plowd. 374. a.
375 a.
Cro. Eliz. 894.
Noy 46.
(3 Rep. 3. b. 155. a.)
cap. 13.
33 H. 6. cap. 100.
(Staf. Fl. Coram. 15.}

Staf. Fl. Coram. 15.
Littleton wrote. A lineall warrantie and assets was a barre to the estate taine when Littleton wrote; whereof more shall be said hereafter.

[4] A common recoverie with a voucher over, and a judgement to recover in value, was a barre of the estate taine when Littleton wrote. [d] And of common recoveries there bee 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 over.

[5] If the king had made a gift in taine, and the donee had suffered a common recoverie, this should have barred the estate taine in Littleton's time, but not the reversion or remainder in the king. And so if such a donee had levied a fine with proclamations after the statute of 4 H. 7. this had barred the estate taine, although the reversion was in the king: (1) [f] But since Littleton wrote, a common recoverie had against tenant in taine of the king's gift, or such a fine levied by him, the reversion continuing in the crowne, is no barre to the estate taine by the statute of 34 H. 8. (2) And where the words of the statute be (whereof the reversion or remainder at the time of such recoverie had shall be in the king) these ten things are to be observed upon the construction of that act. (3)

First, that the estate taine must bee created by a king, and not by any subject, albeit the king be his heire to the reversion; for the preamble speaks of gifts made to subjects, and none can have subjects but the king. And also in the preamble it is said (for service 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 taine, and the reversion descended to the king, yet was not that estate taine restrained by that statute; and so of the like.

Secondly, if the king grant over the reversion, then a recoverie suffered will barre the state taine, because the king had no reversion at the time of the recoverie.

Thirdly, if the king make a gift in taine, the remainder in taine, or grant the reversion in taine, keeping the reversion in the crowne, a recoverie against tenant in taine in possession shall neither barre the estate taine in possession by the expresse purview of the statute, nor by consequence the state in remainder or reversion; for that the reversion or remainder cannot be barred, but where the estate taine in possession is barred.

Fourthly, if a subject make a gift in taine, the remainder to the king in fee, albeit the words of the statute be, (whereof the reversion or remainder of the same, &c.) yet seeing the estate in taine was not created by a king, as hath beene saide, the estate taine may bee barred by a common recoverie.

Fiftly, if Prince Henrie, sonne of Henrie the Seventh, had made a gift in taine, the remainder to Henrie the Seveneth in fee, which remainder by the death of Henrie the Seventh had descended to Henrie the Eighth, so as he had the remainder by descent; yet might tenant in taine, for the cause aforesaid, barre the estate taine by a common recoverie.

Sixthly,
Sixthly, the word (remainder) in the statute is no vein word; for the words of the preamble be, the king hath given or granted, or otherwise provided to his servants and subjects. The word (reversion) in the body of the act hath reference to these words (given or granted); and (remainder) hath reference to these words (otherwise provided.) As if the king in consideration of money, or of assurance of land, or for other consideration by way of provision, procure a subject by deed indented and enrolled, to make a gift in tail to one of his servants and subjects for recompence of service, or other consideration, the remainder to the king in fee, and all this appeare of record; this is a good provision within the statute, and the tenant in tail cannot by a common recoverie barre the estate tail. So it is, if the remainder bee limited to the king in tail; but if the remainder bee limited to the king for yeares, or for life, that is no such remainder as it is intended by the statute, because it is of no remainder of continuance, as it ought to be, as it appeareth by the preamble; and it ought to have some affinity with a reversion, wherewith it is joyned.

Seventhly, where a common recoverie cannot barre the state tail by force of the said statute, there a fine levied in fee, in taile, for lives, or yeares, with proclamations according to the statutes, shall not barre the state taile, or the issue in taile, where the reversion or remainder is in the king, as is aforesaid, by reason [373. a.] of these words in the said act (the said recovery, or any other thing or things hereafter to be had, done, or suffered by or against any such tenant in tail to the contrary notwithstanding), which words include a fine levied by such a donee, and restraineth the same.

Eighthly, but where a common recovery shall barre the estate taile, 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 taile,) the sense and construction is, where tenant in taile is parte or privie 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. (1)

As if tenant in tayle of the gift of the king, the reversion to the king expectant, is diseised, and the disseisor leve a fine, and five yeares passe, this shall barre the estate taile (2): and so if a collaterall ancestour of the donee release with warrantie, and the donee suffer the warrantie to descend without any entry made in the life of the ancestour, this shall binde the tenant in tayle, because he is not party or privie to any act, either done or suffered by or against him.

Tenthly, albeit the preamble of the statute extend onely to gifts in taile made by the kings of England before the act (viz. hath given and granted, &c.), and the body of the act referreth to the preamble (viz. that no such feigned recovery hereafter to be had against such tenant in tail), so as this word (such) may seeme to couple the body and the preamble together; yet in this case (such) shall be taken for such in equall mischiefe, or in like case; and by divers 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 recovery

(1) [See Note 324.]

(2) [See Note 325.]
A recovery in a writ of right against tenant in taile without a voucher, is no barre of any gift in taile.

If tenant in taile the remainder over in fee cesse, and the lord recover in a casewrit, this shall not barre the estate taile, for the issue shall recover in a formedon; neither were either of these barres when Littleton wrote. But let us now heare Littleton.

Sect. 709.

ITEM, si tenant en taile disconti-
nua le taile, et ad issue et dery, et l'uncle del issue releasa al disconti-
nuance ove garantie, &c. et morust sans issue, eco est collateral garran-
ty al issue en taile, pur eco que le garrantie discendist sur l'issue, le quel ne poit soy conveyor a la taile per
meane de son uncle.

THE reason wherefore the warrantie of the uncle having no right to the land entailed shall barre the issue in taile is, for that the law presumeth that the uncle would not unnaturally disheir his lawfull heire, being of his owne bloud, of that right which the uncle never had, but came to the heire by another meane, unlesse hee would leave him greater advancement. *Nemo presumit alteram fosteritiatem sua presulisse.* And in this case the law will admit no proofe against that which the law presumeth. And so it is of all other collateral warranties; for no man is presumed to doe any thing against nature.

[k] And the like holdeth in some other cases: as if a rent be behinde for twentie yeares, and the lord make an acquittance for the last that is due, all the rest are presumed to be paid; and the law will admit no proofe against this presumption (3). [l] So if a man be within the four seas, and his wife hath a childe, the law presumeth that it is the childe of the husband; and against this presumption the law will admit no proofe. (4)

[m] If a man that is innocent be accused of felony, and for fear of a fieth from the same, albeit he judicially acquitted himselfe of the felonie, yet if it be found that he fled for the felonie. 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 upon his flight; and so in many other cases. But yet the general rule is, *Quod stabitur præsumpti non probetur in contrarium,* but, as you see, it hath many exceptions.

[n] It hath beene attempted in parliament, that a statute might be made, that no man should be barred by a warrantie collateral, but

(3) [See Note 326.]

(4) But see ante 214. a. note 3.
but where assets descend from the same ancestor (1); but it never took effect, for that it should weaken common assurances. (2)

Sect. 710.

Also, if the tenant in tail hath issue two daughters and dieth, and the elder entreteth into the whole, and thereof maketh a feoffment in fee with warrantie, &e. and after the elder daughter dieth without issue; in this case the younger daughter is barred as to the one moiety, and as to the other moiety she is not barred. For as to the moiety which belongeth to the younger daughter, she is barred, because as to this part she cannot convey the descent by means of her elder sister, and therefore as to this moiety, this is a collateral warrantie. But as to the other moiety, which belongeth to her elder sister, the warrantie is no bar to the younger sister, because she may convey her descent as to that moiety which belongeth to her elder sister by the same elder sister, so as to this moiety which belongeth to the elder sister, the warrantie is lineall to the younger sister.

Sect. 711.

And note, that as to him that demandeth fee simple per ascum de ses ancestres, il sera barre per warrantie lineal que descendist sur lui, sinon qu' soit restraing per as- cun estatute.

Sect. 712.

But the that demandeth fee tayle by writ of formedom in discender, ne sera my barre per lineal warrantie,

*part—moity que afferc a luy, L. and M. and Bob.

(1) [See Note 327.] (2) [See Note 328.]
tie, sinon que il ad assets per discent en fee simple per meme l’ancester que fist le garrantry. Mes collateral garrantie est barre a celui que demanda fee, et auxy a celui que demanda fee taise sans aucun autre discent de fee simple, sinon en cases quez sont restraines per les estatutes, et autres cases pur certaine causes, comme serrra dit en apres.

warrantie, unless he hath assets by discent in fee simple by the same ancestor that made the warrantie. But collateral warrantie is a barre to him that demandeth fee, and also to him that demandeth fee taise without any other discent of fee simple, except in cases which are restrained by the statutes, and in other cases for certain causes, as shall be said hereafter. (1)

"A D issue deux fillees." If husband and wife, tenants in especial taise, have 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 descendeth upon both daughters, yet the issue in taise shall bee barred of the whole; for in judgement of law the entire warrantie descendeth upon both of them.

"Et l’erige ene en l’entierte, et ent fait un feoffement, &c." Here it is to bee understood, that when one coparcener doth generally enter into the whole, this doth not devest the estate which descendeth by the law to the other, unless shee that doth enter claimeth the whole, and taketh the profits of the whole; for that shall devest the freehold in law of the other parcener.

Otherwise it is after the parceners be actually seized, the taking of the whole profits, or any claim made by the one, cannot put the other out of possession without an actual putting out or disseisin. And in this case of Littleton, when one coparcener [374. a.] entreth into the whole, and maketh a feoffement of the whole, this devesteth the freehold in law out of the other coparcener.

Now seeing the entrice in this case of Littleton devested not the estate of the other parcener, if no further proceeding had benee, then it is to be demanded, that seeing the feoffement doth work the wrong, and bee the wrong either a disseisin, or in nature of an abatement, how can the warrantie annexed to that feoffement that wrought the wrong be collateral, or binde the youngest sister for her part? To this it is answered, that when the one sister entretith into the whole, the possession being void, and maketh a feoffement in fee, this act subsequent doth so explain the entry precedent into the whole, that now by construction of law she was only seised of the whole, and this feoffement can bee no disseisin, because the other sister was never seised; nor any abatement, because they both made but one heire to the ancestor, and one freehold and inheritance descended to them. So as in judgement of law the warrantie doth not commence by disseisin or by abatement, and without question her entrie was no intrusion.

Tenant in taise hath issue two daughters, and discontinueth in fee, the youngest disiseith the discontinuee to the use of herselfe and her sister, the discontinuee ousteth her, against whom shee recovereth

(1) The observations of Lord Vaughan on this Section, and the comment upon it deserve attentive perusal. See Vaughan 373.
recovereth in an assise, the eldest agreeeth to the disseisin, as she may, against her sister, and become joynentenant with her. And thus is the booke in the 21 Assise [a] to be intended, the case being no other in effect; but A. disseiseth one to the use of himselfe and B, B. agreeeth; by this he is joynentenant with A.

"Et nota, quae quant a celuy que demanda sive simple, &c." In these two Sections there are expressed foure legall conclusions:

First, that a lineall warrantie doth binde the right of a fee simple.

Secondly, that a lineall warrantie doth not binde the right of an estate taile, for that it is restrained by the statute of domin conditionibus.

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 said act.

Fourthly, that a collaterall warrantie made by a collaterall ancestor of the donee, doth binde the right of an estate taile, albeit there be no assets; and the reason thereof is upon the statute of domin conditionibus, for that it is not made by the tenant in taile, &c. as the lineall warrantie 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 provided for by the act, yet the warranty being collaterall 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 discretion.

Note, assets requisite to make a lineall warranty a barre must have six qualities. First, it must be assets (that is) of equal value or more at the time of the discretion. Secondly, it must be of discretion, 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 man’s life. Fourthly, it must descend to him as heire to the same ancestor that made the warranty, as Littleton also here saith. Fifthly, it must be of lands or tenements, or rents, or services valuable, or other profits issuing out of lands or tenements, and not personal inheritances, as annuities and the like. Sixthly, it must be in state or interest, and not in use or right of actions or rights of entry, for they are no assets until they be brought into possession. [2] But if a rent in fee simple issuing out of the land of the heire descend unto him whereby it is extinct, yet this is assets, and to this purpose hath in judgement of law a continuance.

[5] A seigniory in fee 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 advowson is assets, whereof [c] Fleta saith; Item de ecclesis quae ad donationem domini pertinent quot sunt, et que, et ubi, et quantum valent que liber ecclesia fier

Fleta Lib. 2. ca. 54. 88. 186. 4 B. S. Garr. 55.
10 E. 3.
A. 3.
43 E. 3. 3.
7 H. 6. 3.
11 E. 3. 20.
73 Bull. Abr. 776, 774.
6 E. 3. 47.
8 Rep. 96.
53 E. 3. 9. 13 E. 3.
36. 5. 36. 14 E. 3.
Mers. 7.
Register 992.
[c] Fleta, lib. 2. cap. 68.
per annum secundum verum ipsius actionemum, et pro mortuo solis
duo extendatur, ut si ecclesie centum marcas velant per annum, ad
centum solis duo extendatur advocatio per annum. (1) And herewith
agreeth Britton, and others have reckoned a shilling in the pound;
and Britton addeth further, nee si la actionem duis esse vendatur,
adongues serv' le reasonable price solongue le value en un an a cel
extent. Wherein it is to be observed, that antiquity did ever reckon
by markes.

Sect. 713.

ITEM, si terre soit donne a un homme
et a les heires de son corps engendres,
le quel prend femme, et ont issue fîts
entre eux, et le baron discontinue le
taille en fee et devy, et puis la femme
releasa ai discontinue en fee ovo garran
tie, &e. et morust, et le garrantie
descendist a le fîts, eco est un collat
eral garrantie.

ALSO, if land be given to a man
and to the heires of his bodie
begotten, who taketh wife, and have
issue a son betweene them, and the
husband discontinues the taille in fee
and dieth, and after the wife releas
eeth to the discontinuance in fee with
warrantie, &c. and dieth, and the
warranty descends to the son, this
is a collateral warrantie.

THIS case standeth upon the same reason that divers other for
merly put by our author doe, viz. that because the heire claim
eeth only from the father per formam doni, and nothing from the
wife, that therefore the warrantie of the wife is collateral, and
the warrantie made by any ancestor male or female of the wife
bindeth; and here the warrantie descendeth after the descent of the
right.

Sect. 714.

MES si tenements soient dones a
le baron et a sa femme, et a les
heires de lour deux corps engendres,
quex aut issue fîts, et le baron discon
tinua la taille et morust, et puis la femme
releasa ovo garrantie et morust, cest
garrantie n'est forsoke un lineal garran
tie a le fîts; car le fîts ne sera
barre en eco cas de suer son breve de
formedon, sinon que il ad assies per
discant en fee simple per sa mere, pur
ceto que lour issue en breve de forme
don coevint conveuuy a luy le droit
come heire a son pere et a sa mere de
lour & deux corps engendres per formae
del

BUT if lands be given to the hus
band and wife, and to the heires of
their two bodies begotten, who
have issue a son, and the husband
discontinue the taille and dieth, and
after the wife release with warranti
e 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,
unless that he hath assets by dis
cent in fee simple by his mother,
because their issue in the writ of
formedon ought to convey to him
the right as heire to his father and
mother

* deux not in L. and M. nor Roh.

(1) Bro. Assis ex Discerit 21 contra.

del done; et is sim in tiel case, le garrantie de le pere et le garrantie de la mere ne sont forsque lineal garrantie al heire, &c.

HERE is a point worthy of observation, that albeit in this case the issue in taile must claime as heire of both their bodies, yet the warrantie 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.

If lands be given to a man and to a woman unmarried, and the heires of their two bodies, and they intermarrie, and are diseised, and the husband release with warrantie, the wife dieth, the husband dieth, albeit the donees did take by moitaries, yet the warrantie is lineall for the whole, because, as our author here saith, the issue must in a formedon convey to him the right as heire to his father and his mother of their two bodies 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 aucun del issue en se taileque a vroy possession, ou que n'avoit aucun possession, fait un garrantie, &c. si celuy que suist le briefe de formedon puissoit per aucun possibilitie, per matter que puissoit estre en fait, convoyer a luy, per [375. b.] ny celuy que fist legarrantie per done, * ceo est un lineal garrantie, et nemy collaterall.

And note, that in everie 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 warrantie, &c. if he which sueth the writ of formedon might by any possibilitie, by matter which might be en fait, convey to him, by him that made the warrantie per formam doni, this is a lineall warrantie, and not collaterall.

Of this sufficient hath beene said before, sed nunquam simus dicitor quod nunquam esset dicitur; for it is a point of great use and consequence.

Sect. 716.

ITEM, si home ad issuee tres filis, et il donna terre al cigne filis, a aver et tener a luy et a les heires de son corps engendres, et pur default de tiel issue, le remaider ad mulines filis, a luy et a les heires de son corps engendres, et pur default de tiel issue † del mulines, le

ALSO, if a man hath issue three sons, and giveth land to the eldest sonne, to have and to hold to him and to the heires of his bodice begotten, and for default of such issue, the remainder to the middle sonne, to him and to the heires of his

† del mulines not in L. and M. and Boh.

Ge added L. and M. and Boh.
his bodie begotten, and for default of such issue of the middle sonne, the remainder to the youngest son, and to the heires of his bodie begotten; in this case, if the eldest discontinue the tailie in fee, and binde him and his heires to warrantie, and dieth without issue, this is a collaterall warrantie to the middle son, and shall be a bar to demand the same land by force of the remainder; 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 said sonnes be disceised, and the father that made the gift, &c. releaseth to the disceisor all his right with warrantie, this is a collaterall warrantie to that son upon whom the warrantie descendeth, causè quæ supra.

Sect. 717.

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 adjudged 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 lie that maketh the warrantie is collaterall to the title of him upon whom the warrantie doth fall; as by the example which Littleton here putte, and by that which hath beene formerly said, is manifest.

† fits added L. and M. and Rob.
† etc. added L. and M. and Rob.
† &c. added L. and M. and Rob.
† &c. added L. and M. and Rob.
† &c. added L. and M. and Rob.

376 a.
ITEM, si puer dona terre a seu

eigil fita, a aver et tener a luy et

a les heires males de seu corps engen-
dres, le remainder a le second fita, &c.

si l'eigne fita alienast en fee vocque
garrantie, &c. et ad issue female, et

morast sans issue male, ceo n'est pas
collaterall garrantie ai second fita,

car il ne serra barre de son action

de formendon en le remainder, pur ceo

que le garrantie descendist ai filler del
eigne fita, et nemy al second fita: car

chesceun garrantie que descendist, dis-
cendist a celuiuy que est heire a luy que

fist le garrantie, per le common ley.

ALSO, if a father giveth land to

his eldest son, to have and to

hold to him and to the heires males

of his body begotten, the remainder

to the second sonne, &c. if the eldest

sonne alieneth in fee with warranty,

&c. and hath issue female, and dieth

without issue male, this is no colla-

terall warranty to the second son,

for he shall not bee barred of his

action of formendon in the remainder,

because the warranty descended to

the daughter of the elder son, and

not to the second sonne: for every

warrantie which descends, descend-

ehim that is heire to him who

made the warrantie, by the common

law.

HERE is rehearsed a maxime of the common law, that every

warrantie doth descend upon him that is heire to him that

made the warrantie, by the common law, as by this example it

appeareth.

"A celuay que est heire a luy que fust le garrantie per le common

"ley, &c." Hereupon many things worthy to be knowne are to be

understood.

[a] First, that if a man incoffeth another of an acre of ground

with warrantie, and hath issue two sons, and dieth seised of another

acre of land, of the nature of burrough English, the feeoffe is

implanted; albeit the warrantie descendeth onely upon the eldest

sonne, yet may he vouch them both; the one as heire to the war-

rantie, and the other as heire to the land: for if he should vouch

the eldest son only, then should he not have the fruit of his war-

ranty, viz. a recoverie in value; the youngest son only he cannot

vouch, because he is not heire at the common law, upon whom

the warrantie descendeth. (1)

[b] So it is of heires in gavelkind, the eldest may bee vouched

[376. b.] as heire to the warranty, and the other sonnes in respect

of the inheritance descended unto them. [c] And in like sort,

the heire at the common law, and the heire of the part of the mother,

shall bee vouched: but the heire at the common law may be vouch-

ed alone in both these cases, at the election of the tenant: et sic de

similiuis. [d] In the same manner if a man dieth seised of certaine

lands in fee, having issue a sonne and a daughter by one venter, and

a sonne by another, the eldest sonne enthrfe and dieth, the land

descends

† car il ne serra barre—me luy ledera, L. and M. and Roh.

(1) 38 E. 3. 22. 43 E. 3. 19. 48 Ass. 41. 4 E. 3. 53. 21 E. 3. 46. 21 E. 3. 36. 11 H. 7. 12.

H. 7. 2. Hale's MSS.

descends to the sister; in this case the warrantie descendeth on the sonne, and be 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 heire by the common law having nothing by descent, the whole loss of the recoverie in value lieth upon 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 have said, that as they are vouched together, so shall they avouch over, and that the recompence in value shall enure according to the losse; and that the effect must pursue the cause, as a recoverie in value by a warrantie of the part of the mother shall goe to the heire of the part of the mother, &c.

Some others hold, that it is against the maxime of law, that they that are not heires to the warrantie should joyne in vouch, or to take benefit of the warrantie which descended not to them; but that the heire at the common law, to whom the warrantie descended, shall deraigne the warrantie, and recover in value; and that this dotth 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 [c] the vouchee shall never sue to have execution in value, untill execution be sued against him. But in this case execution can never be sued against the heire at the common law, therefore he cannot sue to have execution over in value. Secondly, it should be against reason that the heire at the common law should have totum lucrum, and the special heire totum damnum. I finde in our bookees [f] that this reason is yeelded, that the especial heire should not be vouched only; for (say they) if the special heires should be vouched only, then could not they deraigne the warrantie over; which should be mischievous, that they should lose the benefit of the warrantie, if they should be vouched only. But if the heire at the common law were vouched with them, (as by the law he ought) all might be saved; and therefore study well this point how it may be done.

[g] If tenant in generall taile be, and a common recoverie is had against him and his wife, where his wife hath nothing, and they vouche, and have judgement to recover in value, tenant in taile dieth, and the wife surviveth; for that the issue in taile had the whole losse, the recompence shall enure wholly to him; and the wife, albeit she was partie to the judgement, shall have nothing in the recompence, for that she loseth nothing.

[h] If the bastard eigne enter and take the profits, he shall be vouched only, and not the bastard and the mulier; because the bastard is in appearance heire, and shall not disable himselfe.

[i] If a man be seised of lands in gavelkind, 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 unlesse he hath lands by descent.

[k] So if a man be seised of land on the part of his mother, and binde himselfe and his heires 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 diversitie
diversitie betweene a personall lien of a bond, and a real lien of a warrantie.

Sect. 719.

NOTE, if land bee given to a man, and to the heires 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 in tayle maketh a feoffement in fee with warrantie accordingly, and hath issue a son and a daughter and dieth, this warrantie is but a lineall warrantie to the sonne 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 remainder, unless 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 releease to the discontinuance, &c. with warrantie, &c. and after dieth without issue, this is a collateral warrantie to the daughter, because shee cannot convey to her the right which shee hath by force of the remainder by any means of descent by her brother, for that the brother is collateral to the title of his sister, and therefore his warrantie is collateral, &c.

HERE it appeareth, that [1] whatsoever the ancestor taketh any estate of freehold, a limitation after in the same conveyance to any of his heires, are words of limitation, and not of purchase, albeit in words it be limited by way of remainder; (1) and therefore here the remainder, to the heires females, vesteth in the tenant in tayle himselfe. And it is good to bee known, that for learning sake, and to find out the reason of the law, these limitations

1594, by C. Yetsweirt; and by that of 1639. It is however observable, that the text stood as above in the first edition of Coke upon Littleton 1638, and in all the editions to the 9th inclusive.

* Note—Item, L. and M. and Roh.
† sinon—si son, L. and M. Roh. Finson, Bedman, and MSS. This reading, which materially alters the sense of the above passage of Littleton, was much relied on by lord Vaughan as above cited, and is also according confirmed by edit. 1577, by R. Tottel;

† et added L. and M. and Roh.
‡ quæ not in L. and M. nor Roh.

[1] [See Note 329.]
lib. 3. cap. 13. of Warrant at. sect. 720.

limitations to the heiris males of the bodie, and after to the heiris females of the bodie may be put: but it is dangerous to use them in conveyances, for great inconveniences may arise thereupon; for if such a tenant in tayle hath issue divers sons, and they have issue divers daughters, and likewise if tenant in tayle hath issue divers daughters, and each of them hath issue soones, none of the daughters of the sons, nor the soones of the daughters, shall ever 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 eyther onely by males, or onely by females, so as the females of the males, or males of the females, are wholly excluded to bee inheritable to eyther of the said estates tayle: but where the first limitation is to the heiris males, let the limitation be, for default of such issue, to the heiris of the bodie of the donee, and then all the issues, be they females of males, or males of females, are inheritable.

If a man give lands to a man, to have and to hold to him and the heiris males of his bodie, and to him and to the heiris females of his bodie, the estate to the heiris females is in remaynder, and the daughters shall not inherit any part, so long as there is issue male; for the estate to the heiris males is first limited, and shall be first served; and it is as much to say, and after to the heiris females, and males in construction of law are to be preferred.

sect. 720. [377. b.]

item, jeo ay oye dire, que en temps le roy Richard le second, il y fuit un justice del common banke demyrrant en Kent, appel Richel, que avoit issue divers fils, et son entent fuit, que son eigne fils averoit certaine terres et tenements a lui, et a les heires de son corp en engendres; et pur default d'issu, se remandier a le second fils, &c. et issint a le tierce fils, &c. et pur ceo que il voile que nul de ses fils alieneriet, ou seroit garantie pur barrer ou leder les autres queux serront en le remandier, &c. il fuit faire tiel indenture a tiel effect, c'est ascevoir, que les terres et tenements furent done a son eigne fils sur tiel condition, que si l'eigne fils aliena en fee, ou en fee taile, &c. ou si aucun de ses fils alienast, &c. que adonque leur estate cesseret et seroit void, et que adonque mesmes les terres et tenements immediate remandront a le second fils, et a les heires des son corps engendres,

ALSO, I have heard say, that in the time of king Richard the second, there was a justice of the common place, dwelling in Kent, called Richel, who had issue divers soones, and his intent was, that his eldest soone should have certaine lands and tenements to him, and to the heiris of his bodie begotten; and for default of issue, the remainder to the second soone, &c. and so to the third soone, &c. and because he would that none of his soons should alien, or make warrantie to bar 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 and tenements were given to his eldest so on such condition, that if the eldest soon alien in fee, or in fee taile, &c. or if any of his soons alien, &c. that then their estate should ceass and be void, and that then the same lands
Lib. 3. 

Of Warrantie.

Sect. 721.

dres, * et sic ultra, le remainder as autors de ses fts, et livery of seisin fuit accordant.

lands and tenements immediately should remain to the second son, and to the heirs of his body be-gotten, et sic ultra, the remainder to his other sons, and livery of seisin was made accordingly.

"JEO ay oye dire, &c." Those things that one hath by credible hearsay, by the example of our author, are worthy of obser-vation. This invention, devised by justice Richel in the reigne of king Richard the second, who was an Irishman borne, and the like by Thirning, chief-justice in the reigne of Henry the fourth, were both full of imperfections; for Nihil simul inventum est et perfectum, and Sepe viatorem nova non vetus orbita fallit: and therefore new inventions in assurances are dangerous. And hereby it may appeare, that it is not safe for any man (be he never so learned) to be of counsell with himselfe in his owne case, but to take advice of other great and learned men.

Non prosunt dominis que prosunt omnibus, artes.

And the reason hereof is, in suo quiesque negotio hebetior est, quam in alien.

[m] And the same judge, in his owne name, &c. brought an action upon his case against others, and obtained a verdict so as the right of the cause was tried on his side; yet for that upon his owne shewing in his count the action did not lye, ex aessens omnium justiciariorum prater querentiem Richel, judgement was given against him: but let us now leave this judge for example to others, and let us return to our author.

[378. a.]

MES il semble per reason, que toutes tieliex remainders en la forme avantdãt sont voidez et de nul value, et ceo pur trois causes. Un cause est, pur ceo que chescun remain-der que commence per un fait, il co-vient que le remainder soit en luy a que le remainder est tayle per force de mesme le fait, avant liverse de seisin est fait a luy que avera le franttenement; car en tiel case le nessance et le estre de le remainder est per le livery de seisin a celuy que avera le franttenement, et tiel remainder ne fuit al second fts al temps de livery de seisin en le cas avantdãt, &c.

BUT it seemeth by reason, that all such remainders in the forme aforesaid are void and of no value, and that for three causes. One cause is, for that every remainder which beginneth by a deed, it behoveth that the remainder be in him to whom the remainder is entailed by force of the same deed, before the livery of seisin is made to him which shall have the freehold; for in such case the growing and the being of the remainder is by the livery of sei-sin to him that shall have the freehold, and such remainder was not to the second sonne at the time of the livery of seisin in the case aforesaid, &c.

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* see sur nesme condition, seilcet, que si le second fts alienant, &c. que adonques son estige cessera, et que adonques mesmes les terres et tenements remaindront al tierce fts, et a les heires de son corps engendres, added L. and M. and Roh.
HERE our authour is of opinion, that these remainders in the
forme aforesaid, are void and of no value for three causes.

"Un causa est, &c." Here bee setteth downe a rule concerning
remainders, viz. every remainder which commenceth by a deed
ought to vest in him to whom it is limited, when livery of seizin
is made to him that hath the particular estate.

First, Littleton saith by deed, [n] because if lands bee granted
and rendred by fine for life, the remainder in talle, the remainder
in fee, none of these remainders are in them in the remainder, untill
the particular estate be executed.

Secondly, that the remainder bee in him, &c. at the time of the
livery. This is regularly true, but yet it hath divers exceptions.

First, unless 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 J. S. I. S. being then alive, it sufficeth that the
inheritance passeth presently out of the lessour, but cannot vest in
the heire of I. S. for that living his father he is not in rerum natura,
for non est haces viventis ; so as the remainder is good upon this
contingent, viz. if I. S. die during the life of the lessee.

Res. 25. 29.
(1 Rep. 29.)

[o] 35 H. 4. 46. 22 E. 3. 35. 30 Anc. 47. 6 Rs. qu. Jus. cl. 20. (1 Rep. 94.)

[n] 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
can be certaine, yet inasmuch as it depends upon 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 com-
 mencement upon limitation of time, viz. upon the possibilitie of
the death of one man before another, which is a common possibilitie.

A man letteth lands for life upon condition to have fee, and
warranteth the land informa pradicta, afterward the lessee per-
formeth 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 died before the performance of the
condition, the warrantie shall rise and increase according to the
estate, and yet the lessor himselfe was never bound to the war-
arrantie, but it hath relation from the first livery. And by this it
appeareth that a warranty being a covenant real executory, may
extend to an estate in futuro, having an estate, whereupon it may
work in the beginning. But if a man grant a seigniorie for yeares,
on condition to have fee with a warranty in formä præ-
dicid, and after the condition is performed, this shall not[378. b]
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 informä prae-
dicit, 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 haben-
dum, and the estate for yeares is not capable of a warrantie. And
so it is if land be given to A. and B. so long as they joyntly together
live, the remainder to the right heires of him that dieth first, and
warrant the land in formä pradicta ; A. dieth, his heire shall have
the warrantie; and yet the remainder vested not during the life of
A. for
Of Warrantie.

A. for the death of A. must precede the remainder, and yet shall the heir of A. have the land by descent.

Sect. 722.

L The second cause is, if the first sonne alien the tenements in fee, then is the freehold and the fee simple in the alience, and in none other; and if the donor had any reversion, by such alienation the reversion is discontinued: then how by any reason may it be, that such remainder shall commence his being and his growing immediately 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 upon the alience, where he had no manner of right before the alienation, which should bee inconvenient.

S I le primer fite alienast, &c." By the alienation of the donee two things are wrought.

First, the franktenement and fee is in the alience.

Secondly, the reversion is devested out of the donor. [7] And therefore by the alienation that transferreth the freehold and fee simple to the alience, there can no remainder be raised and vested in the second sonne. [r] As if a man make a lease for life upon condition that if the lessor grant over the reversion, that then the lessee shall have fee; if the lessor grant the reversion by fine, the lessee shall not have 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 lessee; for one alienation cannot vest an estate of one and the same land to two severall persons at one time.

In a man’s owne grant, which is ever taken most forcibly against himselfe, the reason of Littleton doth hold; for it hath beene resolved by the justices, [s] that if a man seised of an advowson in fee by his deed granteth the next presentation to A. and before the church becommeth void, by another deed grant the next presentation of the same church to B. the second grant is void, for A. had the same granted to him before; and the grantee shall not have the second avoydance by construction, to have the next avoydance which the grantor might lawfully grant, for the grant of the next avoydance

cos not in L. and M. nor Rob.

avoydance doth not import the second presentation. But if a man seised of an advowson in fee take wife; now by act in law is the wife intituled to the third presentation, if the hus[379. a] band die before. The husband grant the third presentation to another, the husband die, the heire shall present twice, the wife shall have 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 diversitie betwene a title by act in law and by act of the partie; for the act in law shall worke no prejudice to the grantee.

"Auxi si tiel remainder serviet bon, &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 void) being an estate of inheritance in lands or tenements, cannot cease or be void before the state be defeated by entrie; then if this remainder should be good, then must it give an entrie upon the alienee to him that had no right before, which should be against the expresse rule of law, viz. that an entrie cannot be given to a stranger to avoid a voydable act, as before hath beene said in the Chapter of Conditions.

"Leguel servat enconvenient." Here note three things. First, that whatsoever is against the rule of law is inconvenient. Secondly, that an argument ab inconvenientia is strong to prove it is against law, as often hath beene observed. Thirdly, that new inventions (though of a learned judge in his owne profession) are full of inconvenience, Periculosem est res novas et inusitatas inducere.

Eventus varios res nova semper habet.

Sect. 723.

L A fere cause est, quant la condition est tiel, que si l'eigne fite alienavit, &c. que son estat cessera ou serviet void, &c. donques apres tiel alienation, &c. poit le donor enter per force de tiel condition, comit il semble; et issint le donor ou ses heires en tiel case doient plus tost aver la terre que le second fites, que n'avoit aucun droit devant tiel alienation; et issint il semble que tiels remainders en ta cas avandit sont voites. 

T HE third cause is, when the condition is such, that if the elder sonne alien, &c. that his estate shall cease or be void, &c. then after such alienation, &c. may the donor enter by force of such conditions, as it seemeth; and so the donor or his heires in such case ought sooner to have the land than the second sonne, that had not any right before such alienation; and so it seemeth that such remainders in the case foresayd are void.

H ERE it is to bee observed, 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

† &c. added L. and M. and Roh.
‡ &c. added L. and M. and Roh.
Of Warrantie.

of Conditions. And the consequent of the condition, viz. that the lands should remain to another, &c. is void in law, and by the opinion of Littleton the donor may re-enter for the condition broken; for *Utile per inutile non vitiatur*: which being in case of a condition for the defeating of an estate, is worthy of observation.

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 ever; wherein the weaknesse of this invention appeareth: and therefore Littleton here saith, that it seemeth that the donor may re-enter, and speakest 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, upon condition, that the eldest shall not make any discontinuance with warrantie 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 warrantie, the father dieth, the eldest sonne dieth without issue, the puisne may enter; but if the discontinuance had bene after the death of the father, the puisne could not have entred. In this case foure points are to be observed. First, as Littleton here saith, the entrie for the breach of the condition is given to the father, and not to the puisne sonne. Secondly, that by the death of the father the condition descends to the elder sonne, and is but suspended, and is revived by the death of the eldest sonne without issue, and descendeth to the youngest sonne. Thirdly, that the feoffment made in the life of the father cannot give away a condition that is collateral, as it may doe a right. Fourthly, that a warrantie cannot binde a title of entrie for a condition broken (as hath beene said); but if the discontinuance had bene made after the death of the father, it had extinct the condition: which case is put to open the reason of our author's opinion.

In these last three Sections our author hath taught us an excellent point of learning, that when any innovation or new invention starts up, to trie it with the rules of the common law (as our author here hath done): for these be true touchstones to sever the pure gold from the drossie and sophistications of novelties and new inventions. And by this example you may perceive, that the rule of the old common law being soundly (as our author hath done) applied to such novelties, it doth utterly crush them and bring them to nothing; and commonly a new invention doth offend against many rules and reasons (as here it appeareth) of the common law; and the antient judges and sages of the law have ever (as it appeareth [*]) in our booke[s] suppressed innovations and novelties in the beginning, as soone as they have offered to creepe up, lest the quiet of the common law might be disturbed: and so have [*] acts of parliament done the like, whereof by the authorities quoted in the margent, you may in stead of many others, upon this occasion take a little taste. But our excellent author, in all his three booke[s], hath said nothing but *Ex veterum sapientium ore et more.*

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(1) [See Note 330.]
ITEM, a le common ley, devant l'estatute de Gloucester, si tenant per le curteshire est alien en fee oce-que garrantie,* apres son decease ceo fuit un barre al heire,† sicorne appirct per les paroles de mesme l'estatute: mes il est remedy per mesme l'estatute, que le garrantie de le tenant per le curteshire ne serroit my bar al heire, sinon que il y ad assets per disseent per le tenant per le curteshire; car devant le dit estatute, ceo fuit un collateral garrantie al heire, per ceo que il ne puissoit convoyer aucun title de disseent a les tenements per le tenant per le curteshire, mes tansiolement per sa mere, ou auters de ses ancestors‡; et ceo est le cause por que il fuit collateral garrantie.

ALSO, at the common law, before the statute of Gloucester, if tenant by the curtiesie 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 curtiesie shall bee no barre to the heire, unlese that hee hath assets by disseent by the tenant by the curtiesie; for before the sayd statute, this was a collateral warrantie to the heire, for that hee could not convey any title of disseent to the tenements by the tenant by the curtiesie, but only by his mother, or other of his ancestors; and this is the cause why it was a collateral warrantie.

MES si home inheritorprentifeme, les queux ont § fils enter eux, et le pier devie, et le fils entra en la terre, et endowaa sa mere, et puis le mere alien ceo que et ad en sa douer, a un auter en fee oce garrantie accordant, et puis morust, et le garrantie discendist a le fils, ore le fils serra barre a demaunder mesme la terre per cause de la dit garrantie; pur ceo que tiel collateral garrantie de tenaunt en douer n'est pas remedy per aucun estatute. Mesme la ley est, lou tenaunt a terme de vie fait un alienation oceque garrantie, &c. et morust, et le garrantie discendist a celui que avoir le reverstion ou le remainder, il serreront barres per tiel garrantie †.

BUT if a man inheritor taketh wife, who have issue a sonne betweene them, and the father dieth, and the sonne entreth into the land, and endow his mother, and after the mother alieneth that which shee hath in douer, to another in fee with warrantie accordant, and after dieth, and the warrantie descendeth to the sonne, now the son shall be barred to demand the same land by cause of the sayd warrantie; because that such collateral warrantie of tenaunt in douer 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 descendeth to him which hath the reversion or the remainder, they shall be barred by such a warrantie.

* accord added L. and M. and Roh.  
† &c. added L. and M. and Roh.  
‡ &c. added L. and M. and Roh.  
§ issue added L. and M. and Roh.  
† &c. added L. and M. and Roh.  
‡ &c. added L. and M. and Roh.  
§ &c. added L. and M. and Roh.
Of Warrantie.

Of this and the subsequent Section sufficient hath been sayd before in this Chapter, Sect. 697.

"N'est pas remedie per aucun statute." But by a statute made since, this case is remedied, as you see before, Sect. 697.

Sect. 726.

I TEM, 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 descendist sur luy il fuit deins age; en cest cas l'heire poit apres entier sur l'aliens, nient contristecant le garantie descendist, &c. pur cee que nel lachesse serra adjudge en l'heire deins age, que il n'entra pas sur l'aliens en la vie le tenant en dower. Mes si l'heire fuit deins age al temps del alienation, &c. et puis il devient al pleine age en la vie de le tenant en dower, et issint esente de pleine age il n'entra pas sur l'aliens en la vie de le tenant en dower, et puis le tenans en dower morust, &c. la peradven- ture l'heire serra barre per tiel garantie; pur cee que il serra recte sa folie, que il esente de pleine age ne entra pas en la vie de le tenans en dower, &c.

ALSO, in the case aforesaid, if it were so that when the tenant in dower aliened, &c. his heir was within age, and also at that time that the warrantie descended upon him he was within age; in this case the heir may after enter upon the alienation, notwithstanding the warrantie descended, &c. because no lachesse shall be adjudged in the heir within age, that hee did not enter upon the alienation in the life of tenant in dower. But if the heir 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 full age he doth not enter upon the alienation in the life of tenant in dower, and after the tenant in dower dieth, &c. there pardonavture the heir shall bee barred by such warrantie; because it shall bee accounted his folly, that he being of full age did not enter in the life of tenant in dower, &c.

HERE note this diversitie: if the heir bee within age at the time of the descent of the warrantie, he may enter and avoyd the estate either within age, or at any time after his full age: and Littleton saith well, that the infant in this case may enter upon the alienation; for if he bring his action against him, he shall be barred by this warrantie, so long as the state whereunto the warrantie is annexed continue, and be not defeated by entrée of the heire: but if hee be within age at the time of the alienation with warrantie, and become of full age before the descent of the warrantie, the warrantie shall barre him for ever. Our author puteth his cases where the entrée of the infant is lawfull; [a] for where the entrée of the infant is not lawfull when the warrantie descendeth, the warrantie doth binde the infant 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 avoided but by action, in which

13 E. 4. 13.
28 E. 6. 63.
38 Am. 84.
(1 Rep. 128. 164.)
(i) Roll. Abr. 773.
35 E. 6. 63.


13 E. 7. 9.
28 E. 6. 63.
66 H. 2. 104.
94 H. 1. 94.
War. Br. 94.
Lib. 1. Vol. 67. i.
In Archer's case,
which action the warrantie is a barre: and for the same reason likewise it is of a femme covert, if her estray be not lawful, a warrantie descending on her during the coverture, doth bind her. [*] And albeit the husband be within age at the dissent of the warrantie, yet if the estray of the wife be taken away, the warrantie shall bind the wife.

[9] And herein a diversiteit is to be observed between matters of record done or suffered by an infant, and matters in fact; for matters in fact he shall avoid either within age, or at full age, as hath beene said; but matters of record, as statutes merchants and of the staple, recognizances known by him, or a fine levied by him, recoverie against him by default in a real action (saving in dower) must be avoided by him, viz. statutes, &c. by autida quaerela, and the fine and recoverie (1) by writ of error during his minority, and the like. And the reason thereof is, because they are judiciall acts, and taken by a court or a judge, therefore the nonage of the partie, to avoid the same, shall be tried by inspection of judges, and not by the country. And for that his nonage must be tried by inspection, this cannot be done after his full age: and so is the law clerely holden at this day, though there be some difference in our books. But if the age be inspected by the judges, and recorded that he is within age, albeit he come of full age before the reversall, yet may it be reversed after his full age. [*] And so was it resolved by the whole court of king's bench in the case of Rakewiche.

If lands had beene given to the husband and wife and their heires, and the husband had made a feoffment to another, to whom a collateral 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 waiveable right, as she could not waive 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 save herselfe from dammasges. And so note a diversiteit betweene an estate determined, and an estate bound by warrantie.

"Nul laches erra adjudge en le heire deins age." Laches, or losches, is an old French word for slacknesse or negligence, or not doing. And the rule (that no negligence shall be adjudged in an infant) is true, where he is thereby to be barred of his estray in respect of a former right, as by a disseisor; or of his former right, (as Littleton doth here put an example) by a warrantie where his estray is congible. But otherwise it is of conditions, charges and penalties going out of or depending upon the original conveyance, for the laches or negligence shall be adjudged in those cases as well in the infant as in any other. [v] Vid. Pl. Com. Stowet's case per totum. And see further there, where an infant being tenant for life or yeares, shall be punished for doing or suffering of waste; and where he claimeth by purchase, a cessavit shall lie against him, if he pay not his rent by two yeares. And some have said, if he have the tenancie by disseis, and he himselfe cesse, a cessavit doth lie, and he shall not have his age because it is of his owne cesser.

31 E. 3.

[1] [See Note 331.]
Lib. 3. Of Warrantie. Sect. 727, 728.

31 E. 3. Age 54. But other bookes (as some conceive them) be against that: Vid. 9 Edw. 3. 50. 28 E. 3. 99. 14 E. 3. Age 88.

[381. a.] E. and others, which books doe not prove that the cession
vit doth not lye in that case, but the contrary, that hee shall have his age, to the end hee may at his full age certainly know what to plead, or what arrerages to tender; for the land was originally charged with the seigniorie and services.

* Sect. 727. (Act 52 Edw. 3.)

MES ore per l'estatute fait 11 H. 7. cap. 10. it est ordaine, si ascun feme discontinue, alien, release, on confirme ove garrantie ascun terres ou tenements que et tient en dower pur terme de vie, ou en toyle del done sa primer baron, ou de ses ancestres, bu del done d'ascun auter sevis al use le primer baron, ou de ses ancestres, que toute tiels garranties, &c. serroient voicides; et que bien livroit a cestuy que avoir ceux terres ou tenements, apres la mort de mesme la feme d'entre.

BUT now by the statute made 11 H. 7. cap. 10. it is ordained, if any woman discontinue, alien, release, or confirme with warrantie any lands or tenements which she holdeth in dower for terme of life, or in taile of the gift of her first husband, or of his ancestors, or of the gift of any other seised to the use of the first husband, or of his ancestors, that all such warranties, &c. shall be void; and that it shall bee 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 be passed over.

And hereof sufficient hath beene said before, Sect. 697.

Sect. 728.

ITEM, il est partie en le fine de le dit estatute de Gloucester, que parle del alienation ovoce garrantie fait per le tenant per le curtesie en cest forme. Ensemenc, en mesme le manner, ne soit l'heire le feme apres la mort la pere et le mere barre d'action, s'il demanda l'heritage ou le mariage sa mere per briefe d'entre, que son pere aliena en temps sa mere, dont nul fine est levy en la court le roy: et issint per force de mesme l'estatute, si le baron del feme aliena l'heritage ou mariage sa feme en fee ove garrantie, &c.

ALSO, it is spoken in the end of the said statutes of Gloucester, which speakeeth of the alienation with warrantie made by the tenant by the courtesie in this forme. Also, in the same manner, the heire of the woman after the death of the father and mother shall not bee barr'd of action, if hee demandeth the heritage or the marriage of his mother by writ of entry, that his father aliened in his mother's time, whereof no fine is levied in the king's court: and so by force of the same statute.

* This Section not in L. and M. nor Rob.

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&c. per son fait en pais, ceo est clere ley, que cest garrantie ne barrera my theire, sinon que il n’ad assetes per
discent. *

"DON’T nuil fine est levyn en le court le roy, &c." Here are three things worthy of observation concerning the construction of statutes. First, that [a] it is the most natural 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 upon the generall words of the statute is, whether a fine levied onely by a husband seized in the right of his wife with warranty 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 courtesey with warnantie shall not bar the heire, unlesse assets descende. And therefore it should be inconvenient to intend the statute in such manner, as that he that hath nothing but in the right of his wife should by his fine levied with warrantie barre the heire without assets. And this exposition is ex visceribus actis.

Secondly, the words of an act of parliament must bee taken in a lawfull and rightfull sense; as here the words being (whereof no fine is levied in the king’s court) are to be understood, whereof no fine is lawfully or rightfully levied in the king’s court. And therefore [b] a fine levied 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 levied 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. saith (Ita quod episcopus ecclesiam consecrat, Ita quod episcopus ecclesiam legitime consecrat) and the like in a number of other cases in our bookes. And generally the rule is, Quod non præstat impedimentum quod de jure non sortitur effectum.

Thirdly, that construction must be made of a statute in suppression of the mischiefe, and in advancement of the remedie, as by this case it appeareth. For a fine levied 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 remedy, viz. that it should not barre unlesse there were assets, and therefore the mischiefe is to be suppressed, and the remedie advanced. Et qui heret in literá, heret in corticé, as often before hath beene said.

* &c. added L. and M. and Roh.
Sect. 729.

Mes le doubt est, si le baron alienast l'heritage sa feme per fine levoy en la court le roy osevez garrantie, &c. si ceo barrera l'heire sans aucun discent en value. Et quant a ceo, jeo voile icy dire certaine reasons, que jeo ay oye dit en cest matter. Jeo ay oye mon master sir Richard Newton, jades chiefe justice de common banke, dire un foits en mesme le banke, que tiel garrantie que le baron fait per fine levie en le court le roy barrera l'heire, coment que il ad riens per discent, pur ceo que l'estatute dit (dont nul fine est levoy en le court le roy) ; et issint per son opinion celgarrantie per fine demour encure un collateral garrantie, comme il fuit a le common ley; nient remedy per le dit estatute, pur ceo que le dit estatute excepte alienations per fine ove garrantie.

Sect. 730.

ET ascuns auters ont dit, et encore diont le contrarie, et ceo est lour prooufe, que come per mesme le chapiter de dit estatut il est ordeine, que le garrantie le tenant le curtesie ne sera my barre al heire, sinon que il ad assets per discent, &c. coment que le tenant per le curtesie levie un fine de mesmes les tenements oseuez garrantie, &c. auxy fortinent come il poit faire, encore cel garrantie ne barra my l'heire sinon que il ad assets per discent, &c. Et jeo croy que ceo est ley; et pur ceo ils diont, que serroit inconvenient d'entender l'estatute en tiel.

BUT the doubt is, if the husband alien the heritage of his wife by fine levied in the king's 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 have heard said in this matter. I have heard my master sir Richard Newton, late chiefe-justice of the common pleas, once say in the same court, that such warrantie as the husband maketh by fine levied in the king's court shall barre the heire, albeit he hath nothing by discent, because the statute saith (whereof no fine is levied in the king's court ;) and so by his opinion this warrantie by fine remaineth yet a collateral warrantie, as it was at the common law, not remedied by the said statute, because the said statute excepteth alienations by fine with warrantie.

AND some others have said, and yet doe say the contrary, and this is their prooufe, that as by the same chapter of the said statute it is ordained, that the warrantie of the tenant by the courtesie shall be no barre to the heire, unless that he hath assets by discent, &c. although that the tenant by the courtesie levie a fine of the same tenements with warrantie, &c. as strongly as he eecan, yet this warrantie shall not barre the heire, unless that he hath assets by discent, &c. And I believe that this is law; and therefore they say, that
Of Warrantie.

Sect. 731.

Mes ils ont dit, que le statute serra entend selon que ce forme, seelli, ou le statute dit, dont nul fine est levie en court le roy, ceci est a dire, dont nul loial fine est obliquement levée en la court le roy. Et ceci est, dont nul fine de le baron et sa femme soit levée en le court le roy, car al temps de le feaus del dit estatute, echescun estate de terres ou tenements que aucun home ou femme avoir, que descenderoit a son heire, fuit fine simpe sans condition, ou sur certaine conditions en fait ou en ley. Et par ceci que adonques tiel fine poit droiturement entre leire per le baron et sa femme, et les heires le baron garront, &c. tiel garrantie berrera l'heire, & et issint ils diont que cet entendement de l'estatute, car si le baron et sa femme feront un feamment en fee per fait en puis, son heire apres le decease le baron et sa femme aera briefe d'entre sur cui in vit; &c. nient obstant le garrantie de le baron, donque si nul tiel exception fuit fait en l'estatute de la fine levie, &c. donque l'heire averoit le briefe d'entre, &c. nient obstant le fine levie per le baron et sa femme, pur ceci que les parolx de l'estatute devant l'exception de fine levie, &c. sont generals, &c. estascavoir, que l'heire la feme apres le mort.

"esse added L. and M. and Roh.
"mesmes not in L. and M. nor Roh.

§ dit—parle, L. and M. and Roh.
+ &c. added L. and M. and Roh.

But they have said, that the statute shall be intended after this manner, seelli, where the statute saith, whereof no fine is levied in the king's court, that is to say, [382. b.] whereof no lawful fine is rightfully levied in the king's court. And that is, whereof no fine of the husband and his wife is levied in the king's court, for at the time of the making of the said statute, every estate of lands or tenements that any man or woman had, which should descend to his heire, was fee-simple without condition, or upon certain conditions in deed or in law. And because that then such fine might rightfully be levied by the husband and his wife, and the heires of the husband should warrant, &c. such warrantie shall barre the heire, and so they say that this is the meaning of the statute, for if the husband and his wife should make a feomentum in fee by deed in the countrey, his heire after the decease of the husband and wife shall have a writ of entrie sur cui in vit, &c. notwithstanding the warrantie of the husband, then if no such exception were made in the statute of the fine levied, &c. then the heire should have the writ of entrie, &c. notwithstanding
Of Warrantie.

Sect. 731.

sor le pere et la mere ne soit barre l'action, s'il demanda l'héritage ou le mariage sa mere per briefe d'entre, que son pere aliene en temps sa mere, ilissint coment que le baron et la feme aillienent per fine, encore ceo est voier, que le baron aliene en temps la mere, ilissint il serroit en case de l'estatute, como que tielx parox fueront, sellieret, dont nuit fine est levie en la court le roy; et ilissint ils diont, que ceo est [383. a.] a entender, dont nuit fine per le baron et sa feme est levie en la court le roy, lequel est toalmente levie en tiel case; car si les justices ont consans, que home que n'ad rien forsque en droit sa feme, voile levier un fine en son nosme solement, ils ne voylont, ne uniquex devoyent prendre tiel fine d'entre levie per le baron solement sans † sa feme, &c. Ideo quere de cest mater, &c.†

ing the fine levied by the husband and his wife, because the words of the statute before the exception of the fine levied, &c. are general, 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 so albeit the husband and wife aliene by fine, yet this is true, that the husband aliene in the time of the mother, and so it should bee in that case of the statute, unless that such words were, viz. whereof no fine is levied in the king's court; and so they say, that this is to be understood, whereof no fine by the husband and his wife is levied in the king's court, which is lawfully levied in such case; for if the justices have knowledge, that a man that hath nothing but in the right of his wife, will levie a fine in his name onely, they will not neither ought they to take such fine to be levied by the husband alone without his wife, &c. Ideo quere of this matter, &c.

"JE O ay oye mon maister sir R. Newton, &c." who was a gentleman of an ancient family; in Latine, de nova villâ; in French, de neuf ville; and a reverend learned judge, and worthily advanced to be chief-justice of the court of common pleas, whom our author remembers with great reverence, as by his words you may perceive, calling him his master, and citeth his opinion delivered once in the court of common pleas, which our author heard and observed (whose example therein it is necessary for our student to follow); but the latter opinion (as hath beene before observed) being Littleton's owne, is against the opinion of the lord Newton [c], and the law is holden cleerely with our authour at this day: and our authour (as in all other cases) hath good authoritie in law to warrant his opinion: Nulius hominis auctoritas tantum apud nos valere debet, ut meliora non sequeremur si quis attulerit.

"Car si les justices ont consuance, &c." Hereby it appeareth [e] that the judge, if hee knoweth it, ought not to take knowledge of a fine that worketh a wrong to a third person.

"Que serroit inconvenient." Argumentum ab inconvenienti, is very forcible in law, as often hath beene observed.

Of the rest of these three Sections sufficient hath beene said before.

† uniqux not in L. and M. nor Roh.
† asme-added L. and M. and Roh.
† &c. not in L. and M. nor Roh.
ITEM, est ascovoir, que en ceux paroles, ou l’héire demande l’héritage, ou le mariage sa mere, cest parol (ou) est un disjunctive, et est autant a dire, si l’héire demande le heritage sa mere, scilicet, les tenements que sa mere avoit en fee simple per discent ou per purchase, ou si l’héire demanda la mariage sa mere, estascovoir, les tenements que furent donez a sa mere en frankmariage.

ALSO, it is to be understood, that in these words, where the heire demands the heritage, or the marriage of his mother, this word (or) is a disjunctive, 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 marriage of his mother, that is to say,[383.b.] the tenements that were gi- ven to his mother in frankmariage.

SOME, doe expand 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 himself, 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 inherit 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 tail, aswell by discent as by purchase; for that frankmariage is put but for an example.

ITEM, come est move en divers faits ceux paroles en Latyne, Ego et heredes mei * warrantizabimus et imperpetuum defendemus; il est a veoir quel effect ad cel parol, defendemus, en tiels faits; et il semble que il n’ad pas l’effect de garrantie, ne empreint en luy la cause de garrantie; car s’il insint serroit, que il prent effect ou cause de garrantie, donques il serroit mitte en ascuns fines levies en la court le roy: et homé ne veit || ceo unique que cest parol defendemus fuit en ascun fines, mes tantsolement cest parol warrantizabimus; per que semble,

ALSO, where it is contained in divers decees these words in Latin, Ego et heredes mei warrantizabimus et imperpetuum defendemus; it is to bee scene what effect this word (defendemus) hath in such decees; 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 levied in the king’s court: and a man never saw that this word (defendemus) was in any fine, but only

move—note, L. and M. and Roh.
* Etc. added L. and M. and Roh.
† la not in L. and M. nor Roh.
† mitte—note, L. and M. and Roh.
I ces not in L. and M. nor Roh.
"EGO heredes mei warrantizabimus, et imperpetuum defendamus." Wherein three things are to be observed. First, that heredes mei are words of necessity, for otherwise the heires are not bound. [a] Secondly, though in the clause of the warrant it be not mentioned to whom, &c. yet shall it be intended to the seofce. [b] Thirdly, that the seofce may by expresse words warrant the land for the life of the seofce, or of the seofce, &c. but the recoverie in value shall be seen in boxe. [c] Of this Bracton writeth in this manner: Et ego et heredes mei warrantizabimus tali et heredibus suis tantum vel tali et heredibus et assignatis et heredibus assignatorum, vel assignatis assignatorum, et corum hereditatis, et acquietabimus et defendemus eos totam terram illam cum pertinentiis, contra omnes gentes, &c. Per hoc autem quod dicti (ego et heredes mei) obligat se et heredes ad warrantiam prospinguo, et remotos, presentes et futuros, et sucedentem in infinitum.

Per hoc autem quod dicti (warrantizabimus) suscipiit in se obligatorem ad defendendum suum tenementum in possessione rei date et assignatiss suos et corum heredes et omnes alios, &c. Per hoc autem quoddicui (acquietabimus) obligat se et heredes suos ad acquietandum si quis plu petierit servitut vel aliud servitium quam in carit donationis continetur. Per hoc autem quod dicti (defendemus) obligat se et heredes suos ad defendendum si quis velit servitutem ponere rei date contra formam suae donationis. [d] Hereby it appeareth that neither defendere nor acquietare doth create a warrant, but warrantizare only. And as Ego et heredes mei warrantizabimus, &c. in Latine doe create a warrant; so, I and my heires shall warrant. &c. in English, doth create a warrant also.

[c] If a man be bound to A. in an obligation to defend such lands to A. whereof the obligor had infested him for twelve yeares, &c. in this case if he be ousted by a stranger without being impelled, the obligation is forfeit: but if he bee bound to warrant the land, &c. the bond is not forfeited, unless the obligee be impelled, and then the obligor must be ready to warrant, &c.

"Donques il serra mit en aucuns fines, &c." Here Littleton draweth an argument from the words of a fine; and 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 warrant, it would have been contained in fines: and on the other side, seeing this word warrantizo is contained in fines to create a warrant, that therefore that word doth imply a warrant, and not the other,

"Et nul auter verbe en nostre ley." Here it appeareth, that no other verbe in our law doth make a warrant, but warrantizo only, which is only appropriated to create a warrant.

But,

$ et verbe not in L. and M. nor Rob.
$ as, &c. added L. and M.; &c. only added in Rob.
But, *Qui bene dixisse bene duci*; and here of necessity you must distinguish, [*"] first, betwixt a warrant annexed to a freehold or inheritance, (whereof Littleton here speaketh) and a warrant annexed to a ward, which is a chattell real; for there, grant, demise, and the like, doe make a warrant. And of warranties annexed to freeholds and inheritances, some be warranties in deed, and some be warranties in law. A warrant in deed, or an express warrant, (whereof Littleton here speaketh) is created only by this word *warrantiz*; but warranties in law are created by many other words; they be therefore called warranties in law, because in judgment of law they amount to a warrant without this verbe *warrantiz*. [*"] As *dedi* is a warrant in law to the feoffee and his heires during the life of the feoffee, but *concessi* in a feoffment or fine implyth no warranty. (1) But before the statute of *quia empiroteor terrarum*, if a man had given lands by the word *dedi*, to have and to hold to him and to his heires, of the donor and his heires, by certain services, then not only the donor but his heires also had beene bound to warrant: but if before that statute a man had given lands by this word *dedi*, to a man and to his heires for ever, to hold of the chiefe lord, there the feoffer had not been bound to warrant but during his life, as at this day he is.

And albeit the words of the statute of *bigamis be*, *in cartis autem ubi continentur (dedi et concessi, &c.)* yet if *dedi* be contained alone, it doth import a warrant; for the statute doth conclude, *ipse tamen foceffatur in vitis aut ratione proprii doni sui teneatur warrantizare*; so as *dedi* is the word that implyth warrante, and not *concessi*. Also where the words of the statute bee further, *sine clauued que continet warrantiam*, the meaning of the statute is, that *dedi* doth import a warranty in law, albeit there be an express warranty in the deed.

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 points. [*"] Hilt. 14 El. in the court of common pleas, which I myselfe heard and observed. [*"] And if a man make a lease for life reserving a rent, and adde an express warranty, here the express warranty doth not take away the warranty in law, for he hath election to vouch by force of either of them. And in Nokes' case note a diversitee betweene a warranty that is a covenant real, and a warrantie concerning a chattel. [*"] Also this word *exccambium* doth imply a warranty.

Also a partition implyth a warranty in law, as in the Chapter of Parceners appeareth. And hommage auncestrell doth draw to itselffe warrantie, as hath beene said in the Chapter of Homage Auncestrell.

And it is to be observed, that the warrante wrought by this word *dedi*, is a speciall warrante, and extendeth to the heires of the feoffee during the life of the donor only. But upon the exchange and hommage auncestrell the warrantie extendeth reciprocally to the heires, and against the heires of both partie; and in none of the cases the assignee shall vouch by force of any of these warranties, but in the case of the exchange and *dedi*, the assignee shall rebutt, but not in the case of homage auncestrell.

(1) [See Note 332.]
Lib. 3.

Of Warrantie.

[Sect. 733.

[4] And so no man shall have a writ of contra formam collationis, but only the feoffee and his heires which be privie to the deed; but an assignee may rebut by force of the deed.

[7] If a man make a gift in taile, or a lease for life of land, by deed or without deed, reserving a rent, or of a rent service by deed, this is a warrantie in law, and the donee or lessee being impleaded, shall vouch and recover in value. And this warrantie in law extended not only against the donor or lessor, and his heirs, but also against his assignees of the reversion; and so likewise the assignee of lessee for life shall take benefit of this warrantie in law,


[5] When dower is assigned there is a warrantie in law included, that the tenant in dower being impleaded, shall vouch and recover in value a third part of the two parts whereof she is dowerable. (1)

And it is to be understood, that a warrantie in law and assets is in some cases a good bar. [n] In a formdon in the discender the tenant may plead, that the ancestor of the demannant exchanged the land with the tenant for other lands taken in exchange, which descended to the demander, whereunto he hath entred and agreed; or if he hath not entred and agreed unto the lands taken in exchange, then the tenant may plead the warrantie in law, and other assets descended.

[6] 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 formdon in the discender, the reversion and rent shall not barre the demandant; because by his formdon he is to defeat the reversion and rent, Et non potest adduci exceptio ejusdem rei, cujus petitur dissolutio.

But if other assets in fee simple doe descend, then this warrantie in law and assets is a good barre in the formdon.

Here foure things are to be observed: 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 observed.

Secondly, that an express warrantie shall never binde the heires of him that maketh the warrantie, unless (as hath beene said) they be named; as for example, Littleton here saith (Ego et heredes mei); but in case of warranties in law, in many cases the heires shall be bound to warrantie, albeit they be not named.

Thirdly, that in some cases warranties in law doe extend to execution in value, of speciall lands, and not generally of lands descended in fee simple, as you may see at large in my reports.

Fourthly, that warranties in law may be in some cases created without deed, as upon gifts in taile, leases for life, exchanges, and the like.

And seeing somewhat hath beene said out of Bracton and other antient authors, concerning assignees, it is necessarie to shew who shall take advantage of a warrantie, as assignee by way of voucher, to have recompence in value.

If

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(1) [See Note 333.] 59
If a man infeoffed A. and B. to have and to hold to them and to their heirs, with a clause of warrantie, postdicta A. et B. et covenant hereditas et assignatis: in this case if A. dieth, and B. surviveth and dieth, and the heire of B. infeoffeth C. he shall vouch as assignee, and yet he is but the assignee of the heire of one of them; for in judgement of law the assignee of the heire is the assignee of the ancestor, and so the assignee of the assignee shall vouch in infinitum, within these words, (his assignee.)

If a man infeoffeth A. to have and to hold to him, his heires and assignes; A. infeoffeth B. and his heires, B. dieth, the heire of B. shall vouch as assignee to A.: so as heires of assignees, and assignees of assignes, and assignees of heires are within this word (assignes); which seemed to be a question in Bracton's time. And the assignee shall not only vouch, but also have a warrantia carte.

If a man doth warrant land to another without this word (heires,) his heires shall not vouch: and regularly if he warrant land to a man and his heires, without naming assignes, his assignee shall not vouch. But if the father be infeoffed with warrantie to him and his heires, the father infeoffeth his eldest son with warrantie and dieth, the law giveth to the sonne advantage 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 diversitie betweene a warrantie that is a covenant reall, which bindeth the partie to yield lands or tenements in recompence, and a covenant annexed to the land, which is to yield but dammages, for that a covenant is in many cases extended further than the warrantie. As for example:

It hath beene adjudged, that where two coparceners made partition of land, and the one made a covenant with the other, to acquite her and her heires of a suit that issued out of the land the covenantee aliened. In that case the assignee shall have an action of covenant; and yet he was a stranger to the covenant, because the acquitall did runne with the land.

A. seised of the manor of D. whereof a chappell was parcell, a prior with the assent of his covert covenanteth by deed indented with A. and his heires to celebrate divine service in his said chappell weekly, for the lord of the said manor, and his servants, &c. In this case the assignees shall have an action of covenant, albeit they were not named, for that the remedy by covenant doth runne with the land, to give dammages to the partie grieved, and was in a manner appurtenant to the manor. But if the covenant had beene with a stranger to celebrate divine service in the chappell of A. and his heires, there the assignee shall not have an action of covenant; for the covenant cannot be annexed to the manor, because the covenantee was not seised of the manor. See in Spencer's case before remembred, divers other diversities betweene warranties and covenants which yeeld but dammages.

And here it is to be observed, that an assignee of part of the land shall vouch as assignee. As if a man make a seoffement in fee of two acres to one, with warrantie to him, his heires and assignes, if he make a seoffement of one acre, that seoffe shall vouch as assignee; for there is a diversitie betweene the whole estate.
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 assignies, and he make a lease for life, or a gift in taile, the lessee or donee shall not vouch as assignie, because he hath not the estate in fee simple whereunto the warrantie was annexed: but the lessee for life may pray in aide, or the lessee or donee may vouch the lessor or donor, and by this meanes hee shall take advantage of the warrantie. But if a lease for life, or a gift in taile be made, the remainder over in fee, such a lessee or donee shall vouch as assignie, because the whole estate is out of the lessor, and the particular estate and the remainder doe in judgement of law to this purpose make but one estate.

[a] If a man infeoff three with warrantie to them and their heires, and one of them release to the other two, they shall vouch; but if he had released to one of the other, the warrantie had been extinct for that part, for he is an assignee.

[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 moiety. If a man at this day be infeoffed with warrantie to him, his heires, and assignies, and he make a gift in taile, the remainder in fee, the donee make a feoffment in fee, that feoffment shall not vouch as assignie, because no man shall vouch as assignee, but he that cometh in, in privitie of estate; but he must vouch his feoffor, and he to vouch as assignee, but such an assignee may rebute. 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 rebate. And albeit no man shall vouch or have a warrantia carta, either as partie, heire, or assignee, but in privitie of estate, yet any that is in of another estate, be it by disseisin, abatement, intrusion, usurpation, or otherwise, shall rebate by force of the warrantie, as a thing annexed to the land, which sometime was doubted [c] in our books. But herein is a diversite to be observed, when in the cases aforesaid he that rebatteth claimeth under the warrantie; and when he that would rebute claimeth above the warranty, for there shall not rebate. And therefore if lands be given to two brethren in fee simple, with a warranty to the eldest and his heires, the eldest dieth without issue, the survivor albeit he be heire to him, yet shall he neither vouch nor rebate, nor have a warrantia carta, because his tite to the land is by relation above the fall of the warrantie, and he cometh not under the estate of him to whom the warrantie is made, as the disseis, &c. doth.

d] If a man make a gift in taile this day, and warrant the land to him, his heires and assignies, and after the donee make a feoffement and dieth without issue, the warrantie is expired as to any voucher or rebutter, for that the estate in taile whereunto it was kuit is spent: otherwise it is, if the gift and feoffment had beene made before the statute of donee conditionalisbus; for then both the donee and feoffee had a fee simple; and so are our books to be intended in this and the like case.

e] If A. be seised of lands in fee, and B. releaseth unto him or confirmeth his estate in fee with warrantie to him, his heires and assignies; all men agree this warrantie to be good: but some have helden, that no warrantie can be raised upon a bare release or confirmation.
affirmation without passing some estate or transmutation of possession. 

[f'] But the law, as it appeareth by Littleton himself, is to the 
contrary, and that both the party, and (as some doe hold) his 
asignee shall vouch; but he, that is vouched in that case must be 
present in court, and ready to enter into the warrantee and to 
answer, and the tenant must shew forth the deed of release or con-
firmation with warrantee, to the intent the demandant may have an 
answer thereunto, and either deny the deed, or avoid 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 demandant may 
counterplead the voucher by the statute of W. 1. viz. that neither 
vouchee nor any of his ancestors had any seizin whereof he 
might make a feoffment. And this is grounded upon the 
said statute of W. 1. the words whereof be, S'il seist son garnant, 
en present, (1) que luy voile garnanter de son greve, et maintenir 
eren en response, otherwise the tenant must be driven to his war-
rantee carte.

[g'] But a warrantee of it selfe cannot enlarge an estate; as if 
the lessee 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.

[a] If a man make a feoffment in fee with warrantee to him, 
his heires and assignees by deed (as it must be), and the feoffee 
enfeoffeth another by paroll, the second feoffee shall vouch, or 
have a warrantee carte (as hath beene said) as assignee, albeit he 
hath no deed of the assignment, because the deed comprehending 
the warrantee, doth extend to the assignees of the land; and he is a 
sufficient assignee, albeit he hath no deed.

[1] If a man infeoffe two, their heires and assignees, and one of 
them make a feoffment in fee, that seoffee shall not vouch as as-
signee. (2)

If a man make a feoffment in fee to A. his heires and assignees, 
A. infeoffeth B. in fee, who re-infeoffeth A. he or his assignees shall 
never vouch, 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. inasmuch as he claimeth not as heire.

[k] If a man make a feoffment by deed of lands to A. to have 
and to hold to him and his heires, and bind him and his heires to 
warrant the land in formad predicta; this warrantee shall extend to 
the feoffee and his heires; but if he had warranted the land to the 
feoffee the warrantee had not extended to his heires, except the 
words had beene to him and his heires.

If a man letteth lands for life, the remainder in taile, the re-
mainder eddem formad, this is a good estate taile, quia idem semper 
refertur proximo precedenti. (3)

(1) i. e. if he have not his warrantee present. 
(2) [See Note 334.] 
(3) [See Note 835.]
ITEM, si tenant en taile soit seised des terres devisables per testament solonque le custome, &c. et le tenant en taile alien 
mesmes les tenements a son frere en fee, et ad issue, et devie, et puis son frere devisa per son testament mesmes les tenements a un auter en fee, et oblige luy et ses heires a garrantie, &c. et morust aun issue; il semble que cest garrantie ne barrera my l'issue en taile, s'il voit sues son breffe de formedon, pur cec que cest garrantie ne discendra my al issue en le taile, entant que le uncle de l'issue ne fuit my oblige a le garrantie en sa vie: ne que il ne puisser garrantir les tenements en sa vie, entant que le devise ne puisser prender aucun execucion ou effect, for quaque apres son decease. Et entant que le uncle en sa vie ne fuit tenus de garrantir, tel garrantir ne poit discender de luy al issue en le taile, &c. car nul chose poit discender del uncestor a son heire, sinon que mesme ees fuit en l' uncestor.

[386. a] unlesse the

ALSO, if tenant in taile be seised of lands devisorle 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 deviseth by his testament the same tenements to another in fee, and bindeth him and his heirs to warrantie, &c. and dieth without issue; it seemeth that this warrantie shall not barre the issue in the taile, if hee will sue his writ of formedon, because that this warrantie shall not descende to the issue in taile, in so much as the uncle of the issue was not bound to the same warrantie in his lifet ime: neither could hee warrant the tenements in his life, in somuch as the devise could not take any execution or effect until after his decease. (4) And insomuch as the uncel in his life was not held to warrantie, such warrantie may not descende from him to the issue in the taile, &c. for nothing can descende from the ancestor to his heire, same were in the ancestor. (1)

HERE our author declareth one of the maximes of the common law, that the heire shall never be bound to any express warrantie, but where the ancestor was bound by the same warrantie; for if the ancestor were not bound, it cannot descend upon the heire, which is the reason here yeelded by Littleton. [7] If a man make a seoffement in fee, and binde his heires to warrantie, this is void 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 void. And of the other side, if a man binde himselfe to warrantie, and binde not his heires, they be not bound; for he must say as it appeareth before, Ego et heredes mei warrantizabimus, &c. [m] And Fleeta saith, Nota quod heres non tene tur in Anglia ad debita antecessoris reddenda, nisi per antecessorem ad hoc fuerit obligatus, praeter quod debita regis tantum: A fortiort in case of warrantie; which is in the realtie.

But

* terres—tenements, L. and M. and Roh.  
† mesmes not in L. and M. nor Roh.  
(4) [See Note 336.]  
(1) See [Note 337.]  
(6 Rep. 25.  
5 Cro. 490.  
10 Rep. 96.)  
(2) 31 E. 1.  
Grant. 64.  
(Rob. 139.  
Ant. 213. b.)  
Braunsh. 2.  
57, 425.  
Dunwo. Som. 99.  
(c) Fleeta 25a.  
cap. 16. Britton.  
2d. 52.  
(4 Rep. 86.  
Ant. 209. a.)  
* terres—tenements, L. and M. and Roh.  
† mesmes not in L. and M. nor Roh.  
(4) [See Note 336.]  
(1) See [Note 337.]
But a warrantie in law may binde the heire, although it never bound the ancestor, and may be created by a last will and testament. [\*] As if a man devise lands to a man for life or in taille reserving a rent, the devisee for life or in taille shall take advantage of this warrantie in law, albeit the ancestor was not bounden, and shall binde his heire also to warrantie, although they be not named. Also an expresse warrantie cannot be created without deed, and a will in writing is no deed, and therefore an expresse warrantie cannot be created by will.

Sect. 735.

AUXY, a garrantie ne poizt aler selonque la nature des tenements per le custome, &c. mais tantsolemment selonque le formes del common key. Car si le tenant en taille soit seise des tenements en burgh English, leu le custome est, que toute les tenements deins mense le borough devoyent descendier a le fles puisne, et il discontuau le taille oue garrantie, &c. et ad issue deux fles, et morust seise des autres terres ou tenements emesme le burgh en fee simple a le value ou plus de les tenements tailes, &c. uncor le puisne fles avera un forme don de les terres tailes; et ne serra my barre per le garrantie son pere, comen que assets a luy descendist en fee simple de mense le pere, selonque le custome, &c. pur cee que le garrantie descendist a son eigne freque que est en pleine vie, et nemy sur le puisne. \[ Et en mense le maner est de collaterall garrantie fait de tels tenements, lou le garrantie descendist sur l'eigne fles, &c. cee ne barrera my le puisne fles, &c. \]

ALSO, a warranty cannot go according to the nature of the tenements by the custome, &c. but only according to the forms of the common law. For if the tenant in taille be seised of tenements in borough English, where the custome is, that all the tenements within the same borough ought to descend to the youngest sonne, and bee discontnueth the taille 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 have a formacion of the lands tailed, and shall not bee barred by the warranty of his father, albeit assets descended to him in fee simple from his said father according to the custome,[386.b. ] &c. because the warranty descendeth upon his elder brother who is in full life, and not upon the youngest. And in the same manner is it of collateral warranty made of such tenements, where the warranty descendeth upon the eldest sonne, &c. this shall not barre the younger son, &c.
Of Warrantie. Sect. 736, 737.

Sect. 736.

EN meisme lemaner est de tenements en le countie de Kent, queux sont appelles gavelkind, les queux tenements sont deparibles entre les freres, &c. solonque la custome; si aucun tiel garrantie soit fait per son auncester, tiel garrantie descendra tantsolemely al heire que est heire al common ley, § c’estas-savoir, al eigne frere, solonque la consusansa del common ley, et memy a tous les heires queux sont heires de tels tenements solonque la custome ||.

EREUPON a diversitie is to be observed betweene the lien reall, and the lien personal, for the lien reall, as the warrantie, doth ever descend to the heire at the common law: [n] but the lien personal doth binde the speciall heires, as all the heires in gavelkind, and the heire on the part of the mother, as bath beese said.

[0] If two men make a seestement in fee with a warranty, and the one die, soe the cannot vouchue the survivor only, but the heire of him that is dead also; (1) but otherwise, if two joyntly binde themselves in an obligation, and the one die, the survivor only shall be charged.

vid. sect. 663. 716 & 737. (3 rep. 26.)
([a] 17 es. s. dec. 7.)
11 es. 7. 12.
([b] 17 es. 8.)
[9] es. 3. 40.
[17] es. 3.
[50] es. 3. 40.

Matthew Herberts

Sect. 737.

ITEM, si tenant en la taile ad issue deux fîles por divers venters,
et morust, et los fîles entron, et un estrangeaux disseiseti de meemes le
tenements, et l’un de || eux releusa per
son fait a le disseisor tout son droit, et
oblige tuy et ses heires a garrantie, et
morust sans issue: en cest [387. a] case la soer que survequesj1
poit bien enter et ouster le disseisor de
touts les tenements, pur ecoqueti gar
rantie

&c. added L. and M. and Roh.
§ c’estas-savoir al eigne frere, solonque la
consusansa del common ley, not in L. and M.

nor Roh.

1 &c. added L. and M. and Roh.

&c.—les filles, L. and M. and Roh.

(1) [See Note 338.]
Of Warrantie.  

Sect. 738.

Because such warrantie is no discontinuance nor collateral warrantie to the sister that surviveth, for that they are of halfe bloud, and the one cannot be heir to the other, according to the course of the common law. 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 bloud, whereof sufficient hath beeene said in the first booke, in the Chapter of Fee Simple.

Two brothers be by demy venters; the eldest releaseth with warrantie to the disseisor of the uncle, and dieth without issue, the uncle dieth, the warrantie is removed, and the younger brother may enter into the land.

Sect. 738.

Item, if tenant in taile leteth the lands to a man for termes of life, the remainder to another in fee, and a collateral ancestor confirmeth the state of the tenant for life, and bindeth him and his heires to warrantie for termes of the life of the tenant for life, and dieth, and the tenant in taile hath issue and dies; now the issue is barred to demand the tenements by writ of formedon during the life of tenant for life, because of the collateral warrantie descended upon the issue in taile. But after the decease of the tenant for life, the issue shall have a writ of formedon &c.

Here it appeareth, that a warrantie may be raised by a confirmation which transferreth neither estate nor right, whereof sufficient hath beeene said before.

“A warrantie pour terme de vie, &c.” [a] This proveth that a warrantie may be limited, and that a man may warrant lands as well for termes of life or in taile, as in fee. (1)

If tenant in fee simple that hath a warrantie for life, either by an express warrantie or by dedi, be impleaded and vouch, hee shall recover a fee simple in value, albeit his warrantie were but for termes of life, because the warrantie extended in that case to the whole

* home not in L. and M. nor Rob.  
† briefe de not in L. and M. nor Rob.

(1) [See Note 339.]
Of Warrantine.

whole estate of the seoffee in fee simple; (2) but in the case that Littleton here putteth, the tenant for life shall recover in value but an estate for life, because the warrantine doth extend to that estate only.

"Un breffe de formedon, &c." Here is implied, that a collaborall warrantine giveth no right, but shall barre only for[387, b.] life, and after the partie is restored to his action.

It is also to bee observed, that a warrantine may descend to the heirs of him that made it during the life of another.

Sect. 739.

ET sur cego aye oye un reason, que cel case provera un auter case, scilicet, si un home lessa ses terres a un auter, a azer et tener a luy et ses heires pur terme d'auter vie et le lessee morust vivant celuy a que vie, &c. et un Strange enter en la terre que le heire le lessee luy poit ouster, &c. pur cego que en le case procheine avanddit, entant que home poit oblier luy et ses heires a garrantie al tenant a terme de vie tantelement, durant la vie le tenant a terme de vie, et cel garrantie descendist al heire celuy que fist le garrantie, lequel garrantie n'est pas garrantie d'enheritance, mes tantelement pur terme d'auter vie; per mesme le reason lou tenements sont lesses a un home, a azer et tener a luy et a ses heires pur terme d'auter vie, si le lessee morust vivant celuy a que vie, son heire avera les tenements, vivant celuy a que vie, &c. Car ont dit, que si home grant un annuitie a un auter, a azer et percevoir a luy et a ses heires pur terme d'auter vie, si le grantee morust, &c. que apres son mort son heire avera l'annuitie durant la vie celuy a que vie, &c. Quere de ista materia.

AND upon this I have heard a reason, that this case will prove another case, viz. if a man letteth his lands to another, to have and to hold to him and to his heirs for terme of another's life, and the lessee die living celuy a que vie, &c. and a stranger entreth into the land that the heire of the lessee may put him out, &c. because in the case next aforesaid, inasmuch as a man may bine him and his heirs to warrantine to tenant for life only, during the life of the tenant for life, and this warrantine descendeth to the heire of him which made the warrantine, the which warrantine is no warrantine of inheritance, but only for terme of another's life: by the same reason where lands are let to a man, to have and to hold to him and his heirs for terme of another's life, if the lessee die living celuy a que vie, his heirs shall have the lands, living celuy a que vie, &c. For they have said, that if a man grant an annuitie to another, to have and to take to him and his heirs for terme of another's life, if the grantee die, &c. that after his death his heirs shall have the annuitie during the life of celuy a que vie, &c. Quere de ista materia.

"JEO

† &c. not in L. and M. nor Roh.
† terme not in L. and M. nor Roh.
§ son mort not in L. and M. nor Roh.

(2) [See Note 340.]
Of Warrantie.

“JEV ay oye un reason.” Here our student is taught after the example of our author, to observe everie thing that is worth the noting.

“Si un home letsa terre a un auter, &c.” This case is without question, [9] that the heire of the lessee shall have the land to prevent an occupant. And so it is (as Littleton here saith) 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 said in the Chapter of Discents. (1)

Sect. 740.

MESS lou tiel lease ou grant est fait a un home et a ses heires pur terme d’ans, en cest case l’heire le lessee ou le grantee n’aurra unques apres la mort le lessee ou le grantee cee que est issint lessee ou grant, pur cee que est chattel real, et * chateaux reals per le common ley viendra al executors del grantee, ou del lessee, et nemy al heire. †

BUT where such lease or grant is made to a man and to his heires for terme of yere, in this case the heire of the lessee or the grantee shall not after the death of the lessee or the grantee have that which is so let or granted, because it is a chattell real, and chattells reals 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 chattells reals as well as chattells personals shall goe to the executors or administrators of the lessee, and not to his heires. For as estates of inheritance or freehold descendible shall goe to the heire, so chattells, aswell real as personall, shall goe to the executors or administrators.

[7] But if the king’s tenant by knight’s service in capite be seized of a manor, whereunto an advowson is appendant, and the church become void, the tenant dieth, his heire 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 gardeine.

[8] If a bishop hath a ward fallen and dieth, the king shall not have the ward nor the successor, but the executor and the ward shall be assets in his hands. So it is of the heriot, releefee, and the like. [7] But if a church become void in the life of a bishop, and so remaine until 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.

† &c. added L. and M. and Rob.

(1) But several alterations have been made since sir Edward Coke’s time. See ant. 41. b. note 5.
ITEM, en aucun cases il poit estre, que coment que un collateral warrantie soit fait en fea, &c. encore tiai warrantie poit estre defeat et anient. Sicome tenant en talie discontinue le talie en fea, et le discontinue est diseisie, et le frere del tenant en le talie releessa per son fait a le disseisor tout son droit, &c. ove warranty en fea, et morust sans issue, et le tenant en le talie ad issue et derie; ore l'issue est barre de son action per force del collateral warrantie descendent sur lui. Mes si apres ceo le discontinue enter sur le disseisor, donques poit l'heire en le talie aver bien son action de formedon, &c. pur ceo que le warrantie est aniente et defeat, car quant garrantie est fait a un home sur estate que adongues il avoit, si l'estate soit defeat, le garrantie est defeat.

ALSO, in some cases it may bee, that albeit a collateral warrantie be made in fea, &c. yet such a warrantie may be defeated and taken away. As if tenant in taile discontinue the taile in fea, and the discontinue is diseised, and the brother of the tenant in taile releaseth by his deed to the disseisor all his right, &c. with warrantie in fea, and dieth without issue, and the tenant in taile hath issue and die; now the issue is barred of his action by force of the collateral warrantie descended upon him. But if afterwards the discontinue entreth upon the disseisor, then may the heire in taile have well his action of formedon, &c. because the warrantie is taken away and defeated, for when a warrantie is made to a man upon an estate which hee then had, if the estate be defeated, the warrantie is defeated. (1)

"ET morust sans issue, &c." Here (as before in this Chapter hath been noted) the collateral warrantie doth descend upon the issue in taile, before any right doth descend unto him, wherein this diversitie is to bee observed. Where the right is in esue in any of the ancestors of the heire, at the time of the descent of the collateral warrantie, there albeit the warrantie descend first, and after the right doth descend, the collateral warrantie shall binde, as here in this case of our author expressly appeareth. But where the right is not in esue in the heire, or any of his ancestors, at the time of the fall of the warrantie, there it shall not binde. [w] As if lord and tenant be, and the tenant make a feoffment in fea with warrantie, and after the feoffor purchase the seigniorie, and after the tenant cesse, the lord shall have a cessavit; for a warrantie doth extend to rights precedent, and never to any right that commenceth after the warrantie: whereof more shall be said in this Section. Also a warrantie shall never barre any estate that is in possession, reversion or remainder, that is not devested, displaced, or turned to a right before, or at the time of the fall of the warrantie.

[w] If a lease for life be made to the father, the remainder to his next heire, the father is disseised and releaseth with warrantie and dieth; this shall barre the heire, although the warrantie doth fall, and the remainder commeth in esue at one time.

[y] If there be father and sonne, and the sonne hath a rent service, suit to a mill, rent charge, rent secke, common of pasture, or

(1) [See Note 341.]

Vide Sect. 707.

[388. b.] the collateral warrantie, there albeit the warrantie descend first, and after the right doth descend, the collateral warrantie shall binde, as here in this case of our author expressly appeareth. But where the right is not in esue in the heire, or any of his ancestors, at the time of the fall of the warrantie, there it shall not binde. [w] As if lord and tenant be, and the tenant make a feoffment in fea with warrantie, and after the feoffor purchase the seigniorie, and after the tenant cesse, the lord shall have a cessavit; for a warrantie doth extend to rights precedent, and never to any right that commenceth after the warrantie: whereof more shall be said in this Section. Also a warrantie shall never barre any estate that is in possession, reversion or remainder, that is not devested, displaced, or turned to a right before, or at the time of the fall of the warrantie.

[w] If a lease for life be made to the father, the remainder to his next heire, the father is disseised and releaseth with warrantie and dieth; this shall barre the heire, although the warrantie doth fall, and the remainder commeth in esue at one time.

[y] If there be father and sonne, and the sonne hath a rent service, suit to a mill, rent charge, rent secke, common of pasture, or
or other profit apprendre out of the land of the father, and the father maketh a feoffment in fee with warrantie, and dieth, this shall not barre the sonne of the rent, common, or other profit apprendre, quamvis clausula specialis warrantiae vel acquistantiae in cartis testamentium inseratur, quia in tali caso 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 warrantie, and before the death of the father, had beene disseised, and so being out of possession, the warrantie descended upon him, yet the warrantie should not binde him, because at the time of the warrantie made the sonne was in possession. [a] So if my collateral ancestor release to my tenant for life, this shall not binde my reversion or remainder, because that the reversion or remainder continued in me. But if he that hath a rent, common, or any profit out of the land in tail, disseise the tenant of the land, and maketh a feoffment of the land, and warrant the land to the feoffee and his heireis; [a] regularly the warrantie doth extend to all thinges 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 warrantie; and the feoffee shall vouch, as of lands discharged of the rent, &c. at the time of the feoffment made.

A woman that hath a rent charge in fee entermarrieth with the tenant of the land, an estranger releaseth to the tenant of the land with warrantie; he shall not take advantage of this warrantie either by voucher or warrantia cartis; for the wife, if her husband die, or the heire of the wife living the husband, cannot have an action for the rent upon a title before 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 beeene said, the warrantie shall not extend.

So it is if the grantee of the rent grant it to the tenant of the land upon 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 be 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 visi brought by the wife (as by law she may), [a] the feoffee shall vouch as of lands discharged at the time of the warranty made, for that her title is paramount: so if tenant in tail 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 vouch causid qui sustine.

[a] But some doe hold, that a man shall not vouch, &c. as of land discharged of a rent service.

[c] Also, no warrantie doth extend unto meere and naked titles, as by force of a condition with clause of re-entry, exchange, mortmaine, consent to the ravisher and the like, because that for these no action doth lye; and if no action can be brought, there can be neither voucher, writ of warrantia cartis, nor rebutter, and they continue in such plight and essence as they were by their original creation, and by no act can be displaced or de vested out of their original essence, and therefore cannot be bound by any warrantie.
Lib. 3.

Of Warrantie.

[cf] And albeit a woman may have a writ of dower to recover her dower, yet because her title of dower cannot be devested out of the original essence, a collateral warranty of the ancestor of the woman shall not barre her. So it is of a feoffment causa matrimonii fratrelocutii.

[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 chattel, but only to freehold or inheritances, as it appeareth in all Littleton's cases which be put forth in this Chapter. And this is the reason, that in all actions which lessee for yeares may have, a warranty cannot be pleaded in barre, as in an action of trespass, or upon 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 have, as upon the statute of 8 H. 6. assise, or the like, there a warranty may be pleaded in barre. (1)

"Quant garrante est fut a un home sur estate, que adonques il "avoit, si l'estate sois defeat, le garrante est defeat." Here it appeareth, that although a collateral warranty be descended, [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 puts by the discontinuée) the warranty is defeated; and although the discontinuance remaine, and no remitter wrought to the heire, yet the warranty is defeated, and barre removed, so as the issue in tale may have his formesdon, and recover the land. Subiato principali solituri adjunctum. (2)

Sect. 742.

En mesure le maner est, si le dis-continue fait feoressent en fee, reserverant a payer un certaine rent, et pur defaut de payment un re-entry, &c. et un collateral * garrante de ancestor est fait a celui feoffice que ad estate sur condition, &c. et morust sans issue, coment que cel garrante discenderoit sur l'issue en taile, uncere si apres le rent soist adcerere, et le discon- tinued entra en la terre, adonques avera l'issue en taile son recovery per briefe de formesdon, pur cee que le collateral garanty est defeat. Eit isset si aucen tiel collateral garanty soit pleder envers l'issue en taile, en son action de formesdon, il

TN the same manner it is, if the discontinuée make a feoffment in fee, reserving to him a certain rent, and for default of payment a re-entrie, &c. and a collateral warranty of the ancestor is made to the feoffee that hath the estate upon condition, &c. and dieth without issue, albeit that this warranty shall descend upon the issue in taile, yet if after the rent be behind, and the discontinuée enter into the land, then shall the issue in taile have his recovery by writ of formesdon, because the collateral warranty is defeated. And so if any such collateral warranty be pleaded against the

* garrante de ancestor est fait—amestuer releve, in L. and M. and Roh.

† &c. added L. and M. and Roh.

[1] [See Note 342.]

[2] [See Note 343.]

Il peut montrer le matter come est avancité, comment le garrantie est défait, &c. et issint il poit bien maintainer son action, &c. &c.

(10 Rep. 93.)

HERE Littleton putteth another case upon the same ground and reason, viz. where the state whereunto the warrantie is annexed is defeated, there the warrantie itself is defeated also, which is one of the maximes of the common law.

Sect. 743.

ITEM, si tenant en tailie fait un feoffement a son uncle, et puis l'uncle fait un feoffement en fee ovenque garrantie, &c. a un auter, et puis lefeoffedeluncle enfeoffa aremene l'uncle en fee, et puis l'uncle enfeoffa un estrange en fee sans garrantie, et morust sauns issue, et le tenant en tayle morust si issue en le taile voyelle porte son breve de formedon envers l'estrange que fuit le darrein feoffee, &c. et ceo per l'uncle, l'issue ne sera uneque barre per le garrantie que fuit fait per l'uncle al dit primer feoffee de son uncle, pur ceo que le dit garrantie fuit defait et anient, pur ceo que l'uncle a luy il reprist cy grand estate de son § primer feoffee a que le garrantie fuit fait, sicome mesme le feoffee avoit de luy. Et la cause pur que le garrantie est anient en ceo cas est ceo, scilicet, que si le garrantie estoieroit en sa force, donque l'uncle garrantera a luy mesme, que ne poit estre.

(AVS. 399.)

HERELittleton putteth another case where a warrantie may be defeated, as when the uncle taketh backe aslarge an estate as he had made, the warrantie is defeated, because he cannot warrant land to himselfe. [390. a.]

[8] And so it is if the uncle had made the warrantie to the feoffee, his heires and assignes, and taken backe an estate in fee, and after unforefet another, yet the warrantie is defeated, for that he cannot be assignee to himselfe, and a man shall

1 &c. not in L. and M. nor Roh.
2 &c. added L. and M. and Roh.
shall not regularly vouche himselfe as assignee of a fee simple, and
the law will not suffer things inutile and unprofitable. [a] And yet
if the father be infeoffed with warrantie to him and his heires, the
father infeoffeth his heire apparent in fee and dieth, he (as it hath
beene said) shall vouch himselfe, and the heire in borow English,
by reason the act in law determined the warrantie betweene the
father and the sonne.

[f] But if a man maketh a feoffement in fee with warrantie 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
remaineth still; or if two doe make a feoffement with warrantie to
one and his heires and assignes, and the feoffee re-enfeoffe one of the
feoffors, the warrantie doth also remaine.

[sect. 744]

Mes si le feoffee fesoit estate al
uncle pur terme de vie, ou en
taille, savant le reversion, &c. ou que
il fait done en taille au uncle, en un
les pur terme de vie, le remainder
ouster, &c. en cest cas le garantie n'est
pas tout austerment anient, mes est
mis en suspence durant l'estade que
l'uncle ad. Car apres ceo que l'uncle
est mort sans issue, † &c. donques celui
en le reversion, ou celui en le re-
mainder, barrerait l'issue en tayle en
son briefe de formedon per le colla-
teral garantie en tiel cas, &c. Mes
aurement est tou l'uncle avoit auxy
grand estate en la terre de le feoffee,
a que le garantie fuit fait, comme le
feoffee avoit de tayle. Causa patet.

But if the feoffee had made an
estate to his uncle for terme of
life, or in tayle, saving the reversion,
&c. or a gift in tayle to the uncle, or
a lease for terme of life, the remain-
der, over, &c. in this case the war-
rantie is not altogether taken away,
but is put in suspence during the
estate that the uncle hath. For after
that, that the uncle is dead without
issue, &c. then he in the reversion,
or he in the remainder, shall barre
this issue in tayle in his writ of for-
medon by the collateral warrantie in
such ease, &c. But otherwise it is
where the uncle hath as great estate
in the land of the feoffee to whom
the warrantie was made, as the
feoffee hath himselfe. Causa patet.

"PUR terme de vie, ou en tayle." Here it appeareth [k] that
by taking a [l] lease for life, or a gift in tayle, the warrantie
is suspended.

A man infeoffeth a woman with warrantie, they intermarry and
are impalead, upon the default of the husband, the wife is received,
she shall vouch her husband, &cc. notwithstanding the warrantie was
put in suspence. [m] And so on the other side, if a woman infeoffe
a man with warrantie, and they intermarry and are impaled, the
husband shall vouche himselfe and his wife by force of the said
warrantie.

An

Voucher 102. [m] 4 E. 2.

Voucher 243. 246.

[n] An infant en venture ou mere may be vouched if God give him a birth, and if not, such a one heire to the warrante, but he cannot be vouched alone without the heire at the common law, for proces shall be presently awarded against him.

"Mea est mise in suspence." [0] Tenant in tayle maketh a feoffement in fee with warrantie, and disseiseth the continuance, and dyeth seized, leaving assets to his issue. Some hold that in respect of this suspended warrantie and assets, the issue in talle shall not be remitted, but that the continuance shall recover against the issue in tayle, and he take advantage of his warrantie, if any hee hath, and after in a formeden brought by the issue, the continuance shall barre him in respect of the warrantie and assets; and so every man's right saved. (1)

Sect. 745.

ITEM, if the uncle apres tiel feoffement fait ove garrantie, ou release fait per luy ove garrantie, soit attaint de felony, ou utlage de felony, tiel collateral garrantie ne barrera my ne grevera l'issue en le talle, pur cee, que per le attaindee de felonie, le saske est corrupt enter eux, &c.

Also, if the uncle after such feoffment made with warrantie, or a release made by him with warrantie, be attaint of felony, or outlawed of felony, such collaterall warrantie shall not bar nor grieve the issue in the talle, for this, that by the attainer of felony, the blood is corrupted betweene them, &c.

OU release fait per luy ove garrantie." Note a warrantie grounded upon a release. Hereof you shall reade before in this Chapter.

"Soit attaint de felony, ou utlage, &c." Note, according to Littleton here, there be two manner of attainers: the one is after appearance, and that in three manners; by confession, by battell, or by verdict: the other upon proces to bee outlawed, which is an attainer in law. But (as hath beene said) there is a great diversitie, as to the forfeiture of land, betweene an attainer of felony by outlawry upon an appeale, and upon an inditement: for in the case of an appeale the defendant shall forfeit no lands, but such as hee had at the time of the outlawrie pronounced; but in case of inditement, such as hee had at the time of the felony committed. And the reason of this diversitie is evident; for that in the case of appeals there is no time alleaged in the writ when the felony was done, and therefore of necessitie it must relate in that case only to the judgement of the outlawry: but in the case of inditement there is a certain time alleaged, and therefore in that case it shall relate to the time alleaged in the inditement when the felony was committed. But in the case of the inditement there is also a diversitie

(1) [See Note 344.]
diversitie to be observed; [o] for, as hath beene said, it shall relate to the time alleged in the indictment for avoyding 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 judgement, as well in this case of outlawrie as in other cases. And where Listleton saith, (attaint de felony) if a man be convict of felony by verdict, and delivered to the ordinary to make purgation, [h] hee cannot be vouched, for that the time of his purgation (if any should be) is uncertaine, and the demandant cannot be delayed upon such an uncertaintie; but the tenant is not without remedie, for hee may have his warrantia carte.

“Attains.” Of this word hath beene spoken in the second Booke in the Chapter of Villenage.

Upon several attainers of felonies, there lye three several writs of escheate, viz. [*] first, when he hath judgement to be hanged: secondly, when he is outlawed: thirdly, when he abjureth the realme. [q] The defendant in an appeale of death did wage battell, and was a laim in the field, yet judgement was given that he should be hanged; and the justices said, that it is altogether necessary that such a judgement be given, for otherwise the lord could not have a writ of escheate. [r] And in eire it hath beene scene, that a man hath beene attainted after his death by presentment, &c. (2) The difference betweene a man attainted and convicted in, that a man is said convict before hee hath judgement; as if a man bee convict by confession, verdict, or recreancie. And when he hath his judgement upon the verdict, confession, or recreancie; or upon [391. a.] the outlawrie, or abjuracion, then is he said to be attaint. And thus is the law taken at this day, notwithstanding [*] some diversitie of opinions in our books.

If a felon be convicted by verdict, confession, or recreancie, he doth forfeit his goods and chattells, &c. presently. [r] For where a reason hath beene yelded in our books, that the praying of his clergie was a refusal of the judgement 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 be convict of pettie treason, or murder, or any other crime, for which he cannot have his clergie, yet by the verie conviction he forfeiteth his goods and chattells before attainer. And [u] Stanford (speaking of a felon convict by verdict) saith, that he shall forfeit his goods which he had at the time of the verdict given, which is the conviction in that case; and by the statute of 1 R. 3. cap. 3. no sheriffe, bailiffe, &c. shall seise the goods of a felon before hee bee convicted of the felony; whereby it appeareth, that the goods may be seised as forfeit after conviction. And the [x] old statute is worthy of noting: Provisum est in curia nostra coram justiciariis nostris quod de certo nullo homo captus pro morte hominis vel aliud feloniam pro quod debet imprisonari, dispiciatur de terris et tenementis vel castallis suis quoqueaque convictus fuerit. So as by a conviction of a felon, his goods and chattells are forfeited; but by attainer, that is by judgement given, his lands and tenements are forfeited, and his blood corrupted, and not before.

[y] If the partie upon his arraignement refuse to answer according to law, or say nothing, he shall not be adjudged to be hanged, but for his contempt, to pecunia foris et dure, which worketh no attainder.

(2) [See Note 345.]
der for the felony, nor forfeiture of his lands, or corruption of blood. 
But in case of high-treason, if the partie refuse to answer according 
to law, or say nothing, hee shall have such judgement by attaisnder, 
as if he had beene convicted by verdict or confession. (1)

"Feloni." [a] Ex vi termini significat quotlibet capitale 
crimen felleo animo perpetratum, in which sense murder is said to 
said to be a feloni, and is so appropriated by law, as felonice 
cannot be expressed by any other word. [a] And in antient times this 
word (felonic) was of so large an extent as it included high-treas 
and therefore in our antient books, by the pardon of all felo 
hies, high-treason, or counterfeiting of the great seal, and of 
the king's coine, &c. was pardoned. [b] But afterwards it was resolved, 
that in the king's pardon or charter, this word (felnicie) should only 
extend to common felonies, and that high-treason should not be com 
prehended under the same, and therefore ought to be specially 
named. And yet that a pardon of all felonies should extend to pet 
ette treason; wherefore by the law at this day under the word 
(felony) in commissions, &c. is included petite treason, murder, ho 
homicide, burning of houses, burglary, robbery, rape, &c. chance 
medly, se defendendo, and petite larceny. [c] For such of these 
crimes for which any shall have this judgement, to be hanged by the 
necke till he be dead, he shall forfeit all his lands in fee simple, and 
his goods and chattels; for felony by chance-medly, or se defendendo, 
or petite larceny, he shall forfeit his goods and chattels, and no lands 
of any estate of freehold or inheritance. And all felonies pun 
ishable 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 civil law, because it is done upon the high sea, as pyrrace, 
robbery, or murder, whereof the common law did take no notice, 
because it could not be tried by twelve men. If this pyrrace be tried 
before the lord admirall in the court of the admiralty, according to 
the civil law, and the delinquent there attainted, yet shall it work 
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 regine of queene Elizabeth, certaine English pyrrats, 
that had robbed on the sea merchants of Venice, in amity with the 
queene, being not known, obtained a coronation pardon, whereby 
amongst other things, the king pardoned them all felonies. It 
was [c] resolved by all the judges of England upon conference and 
avisement, that this did not pardon the pyrrace; for seeing it was 
no felonie whereof the common law tooke consunse, and the statute 
of 28 H. 8. did not alter the offence, but ordaine a triall and inflict 
punishment, therefore it ought to be pardonned 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 
exequed. 

Pyrata commeth of the word spernere, which signifieth a rove or 
sea. Attainder of heresie or praminire worketh no corruption of 
bloud, nor heresie, forfeiture of lands; but in case of praminire, 
forfeiture of lands in fee simple, but not of lands in tale, as formerly 
yth hath been said. (2) [f] By some statutes it is said, sur forfei 
corps et de avoire, or sub forisuctura omnium que in potes 
si obtinet, or to be at the king's will, body, lands, and g

(1) On the prine forte et dure, see Mr. justice Blackstone's Commentaries, vol. 4.
(2) [See Note 346.]
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, *Easit judg'ment de vie et member, or subeit judiciam vitae vel membrorum*, in that case judgement of death shall be given, as in case of felonie, viz. that he be hanged by the necke till he be dead, and consequently his blood is corrupted (as our author here saith,) and shall forfeit as in case of felonie.

[391. b.] There is also a court of the constable and marshall, who have consuance of contracts of deeds of arms, and of warre out of the realm, and also of things touching warre within the realm, which may not be determined or discussed by the common law, and also all appeals of offences done out of the realm, and they proceed according to the civil law: but these things more properly pertain to another kind of treatise, and therefore I shall speake no more thereof in this place, but only for the satisfaction of the studious reader, to quote some authorities of law touching the jurisdiction of that court, that hee may have some taste 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 said to be attainted, *attinctus*, for that by his attainder of treason or felonie his blood is so stained and corrupted, as, first, his children cannot be heires to him, nor to any other ancestor, and therefore the warrantie cannot binde; for thereby heires only are to be bound.

Secondly, if he were noble or gentle before, he and all his children and posteritie are by this attainder made base and ignoble, in respect of any nobilitie or gentrie which they had by their birth.

Thirdly, this corruption of blood is so high, that regularly it cannot be absolutely salved but by authoritie of parliament: all which is implied in the same (&c.). (1)

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**Sect. 746.**

**ITEM**, si tent in taile soit disseisie, et puis fait releas de disseisier ove garrantie en fee, et puis le tenant en taile est attaint, ou utiage de felony, et ad issue et morust; en cest case l'issue en tailepoi ente sur le disseisier. Et

(1) The policy and justice of our laws of forfeiture in this respect are most ably dis-
cussed in Mr. Yorke's celebrated Considerations on the Law of Forfeiture.
Of Warrantie.

Et la cause est pur ceo, que * rien fait discontinuance en est case, for cesse le garantie, et garantie ne poit descender al issue en taile, pur ceo, que le sanke est corrupt perener celuy que fit le garantie et issue en taile.

Sect. 747.

Car le garanty toute foits demurt a le common ley, et la common ley est, † ore quant home est attaint ou utlage de felonie, quel utlugarie est un attaider en ley, que le sanke perener luy et son fits, et tout autres queux scerra dits ses heires, est corrupt, issint que † riens per discent poit descendre a ascun que poit estre dit son heire per le common ley. Et la feme de tiel home que issint est attaint de felonie, ne scerra jammes endow de les tenements ou baron issint attaint. Et la cause est, pur ceo que homes plus escherent defaire ascuns felonies. † Mes l'issue en taile quant a les tenements tailes n'est pas en tiel cas § barre, pur ceo que || est enhirite per force de le statute, et nemy per le course de common ley : et pur ceo tiel attaider de son pier ou de son ances tor en le taile ‖, ne luy oyster de son droit per force de le taile, &c.

FOR the warrantie always abideth at the common law, and the common law is such, that when a man is attaint or outlawed of felony, which outlawrie is an attainer in law, that the bloud betweene him and his sonne, and all others which shall bee said his heires, is corrupt, so that nothing by discent may desced to any that may bee said his heire by the common law. And the wife of such a man that is so attaine, shall never be endowed of the tenements of her husband so attainted. And the cause is, for that men shold more eschew to commit felonies. But the issue in taile as to the tenements tailed is not in such case barred, because hee is inheritable by force of the statute, and not by the course of the common law: and therefore such attainer of his father or of his ancestor in the taile, shall not put him out of his right by force of the taile, &c.

"L'issue en taile poit enter." And the reason is, for that by the attainer of the father, it is now in judgement of law but a release without warrantie; for albeit the warrantie at the time of the release was effectuall, yet it worketh no discontinuance unlesse it descendeth upon the issue in taile; so as if it be defeated, extinct, or determined in the life of the tenant in taile, then no discontinuance is wrought: and so it is if tenant in taile hath issue, and releaseth to the disissor with warrantie, and after is attainted of fel onie, and after obtaineth his pardon and dieth, the issue in taile may

* mull added L. and M. and Roh.
† tiel added L. and M. and Roh.
¶ mull added L. and M. and Roh.
§ &c. added L. and M. and Roh.
§ barre not in L. and M. nor Roh.
¶ &c. added L. and M. and Roh.
\( \text{Plowd. 251. n.} \\ \text{6 Inst. 341.)} \)
may enter; [*] for the pardon doth not restore the blood as to the warrantie, 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

[392. a.] the land in respect of the corruption of the blood upon the attainer of himselfe. [4] And it is a generall rule, that having respect to all those whose blood was corrupted at the time of the attainer, the pardon doth not remove the blood neither upward nor downward. As if there be grand father, brother, and sonne, and the grandfather and father have divers other sonnes, if the father be attainted of felonie and pardoned, yet doth the blood remaine corrupted not onely above him and about him, but also to all his children borne at the time of his attainer. But in the case of Littleton, if tenant in taile at the time of his attainer had no issue, and after the obtaining of his pardon had issue, that issue should have beene bound by the warrantie; for by the pardon he was as a new creature, tanguum filius terrae, whose blood upwards remaine corrupted; but for the issue had after the pardon, hee is inheritable to his father; and if his father had issue before the pardon, and hath issue also after and dieth, nothing can descend to the youngest, for that the eldest was at the life of the father without issue, then the youngest should inherit.

“Le garrantie demurt al common ley.” The collaterall warrantie is not restrained by the statute of dominis conditionalibus, but a lineall warrantie is restrained by the statute, unless there be assets; as formerly at large hath beene said.

“Et la feme de tiel home que issint est attaint, &c. ne serra jam-“ mes endow, &c.” It is to be observed, that the judgement against a man for felonie is, that he be hanged by the neck untill he be dead; but implicative, (as hath beene said) he is punished first in his wife, that she shall lose her dower. Secoydly, in his children, that they shall become base and ignoble; as hath beene said. Thirdly, that he shall lose his posterity, for his blood is stained and corrupted, that they cannot inherit unto him or any other an-cestor. Fourthly, that he shall forfeit all his lands and tenements which he hath in fee, and which he hath in taile, for term of his life. And fifthly, all his goods and chattels. And thus severe it was at the common law; and the reason herof was, that men should fear to commit felonie: Ut pena ad pauros, metue ad omnes perveniat. And it is truly said, Et si meliores sunt quos duci amor, tamen plurum sunt quos corrigir timor. And so it is afortiori in case of high treason. But some acts of parliament have altered the common law in some of these points: first, by the statute of dominis conditionalibus, lands intailed were not forfeited neither for felonie nor for treason, but for the life of tenant in taile. This act was made by king Edward the first, who (as our books [i] speake) was the most sage king that ever was: [k] and the cause wherefore this statute was made, was to preserve the inheritance in the hands to whom the gift was made, notwithstanding any attainer of felonie or treason. And this act in historie is called generilitione municipalis; for that by this act the families of many noblemen and gentlemens were continued and preserved to their posterities. And this law continued
in force from the thirteenth year of King Edward the First, until the [?] twenty-sixth year of King Henry the Eighth, when by act of parliament estates in taile are forfeited by attainer of high treason. But as to felonies (whereof our author here speaketh) the statute of donis conditionatis non doth yet remain in force, so as for attainer of felonie, lands or tenements entailed and not forfeited, but only (as hath beene said) during the life of tenant in taile, but the inheritance is preserved to the issues.

[m] The wife of a man attainted of high treason or petit treason shall not be received to demand dower, unless it be in certaine cases specially provided for. But the wife of a person attainted of misprision of treason, murther, or felonie, is dowerable since our author wrote, [n] by the statute in that case made and provided, which is more favourable to the woman than the common law was.

[o] If a seigniorie be granted with warrantie, and the tenancie escheat, the seigniorie whereunto the warrantie was annexed is extinct, and consequently the warrantie defeated, and it shall not extend to the land; et sic in similibus.

If a collaterall ancestor release with warrantie, and enter into religion, now the warrantie doth binde; but if after he be deraigned, now it is defeated.

Sect. 748.

ITEM, si tenant en le taile enfeoffa son uncle, le quel enfeoffa un auctor en fee ove garrantie, &c. si aprés le feoffe per son juit releasa a son uncle toutes manneres de garranties, ou toutes manneres de covenants reales, ou toutes manneres de demandes, per tiel release le garrantie est extinct. Et si le garrantie en ce case soit pleade envers le heire en taile, que portia son breiue de formedon, pur berrar le heire de son action, si l'heire avoit le dit releas et cee pledast, il defetera le plee en barre, &c. Et multis auters cases et matters y sont, per queus home poit defeater garrantie, &c.

ALSO, if tenant in taile infeoff his uncle, which infeoffeth another in fee with warrantie, if after the feoffe by his deed release to his uncle all manner of warrantie, or all manner of covenants reals, or all manner of demands, by such release the warrantie is extinct. And if the warrantie in this case bee pleaded against the heire in taile that bringeth his writ of formedon, to barre the heire of his action, if the heire have and plead the said release, &c. he shall defeat the plea in barre, &c. And many other cases and matters there be, whereby a man may defeat a warrantie, &c.

LITTLETON having spoken in what cases warranties may bee defeated and extinguished by matter in law, now he sheweth how a warrantie may be discharged or defeated by a matter in deed: and hereupon he putteth an example of a release in three several manners.

First, by a release of all warranties.

Secondly, by a release of all covenants reals.

And

le dit release et cee pledast—et pledast le dit reladas, &c. in L. and M.
And thirdly, by a release of all demands.

[393. a.] If a man make a gift in title with warrantie, this warrantie is also intailed, and therefore a release made by tenant in title of the warrantie, shall not barre the issue, no more than his release shall bar the issue to bring an attaint upon a false verdict, or a writ of error upon an erroneous judgement given against the father, nor his gift can barre the issue of the deed that create the estate title, nor of any other deed necessary for defence of the title.

"Apres le feoffee release." Littleton here puttheth his case where one is bound to warrant; put the case [r] then that two make a feoffement in fee, and warrant the land to the feoffee and his heirs, and the feoffee release to one of the feoffors the warrantie, yet he shall vouche the other for the moytie. And so it is if one infeoff two with warrantie, and the one release the warrantie, yet the other shall vouche for his moytie.

"Si le heire avoit le dit release, &c." Here it appeareth, that the release being made to the uncle being his ancestor, the deed doth after the decease of the uncle belong to him, and therefore he cannot plead it, unless he sheweth it forth.

Et multis autors cases et matters y sont, per quexx home poct "defeater warrantie, &c." As namely by a defeasance, as other things executorie may. Also a warrantie may lose his force by taking benefit of the same. In a praciefe the tenant voucheth, and at the sequatur sub suo periculo, the tenant and the vouchee make default, whereupon the demandant hath judgement against the tenant. And afterwards the demandant brings a scire facias against the tenant to have execution; in this case the tenant may have a warrantia carte. And if in that case a stranger had brought a praciefe against the tenant, hee might have vouche against, for by the judgement given against the tenant, the warrantie lost not his force; but if the tenant had judgement to recover in value against the vouchee, hee should never vouche against by reason of that warrantie, because hee had taken advantage of the warrantie. And it is to be observed, that upon the proces of summoncaes ad warrantizandum, if the sheriﬁ returne the vouchee summoned, and he make default, the tenant shall have a capias ad valentiam; but if he returne that the vouchee had nothing, then after the sicut alias et ﬁtures a sequatur sub suo periculo shall issue; and there if the vouchee make default, the tenant shall not have judgement to recover in value, for he was never 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 been summoned before: but in some special cases there shall be two recoveries in value upon one warrantie. As if a disseissor give lands to the husband and wife, to the heires of the husband, the husband alieneth in fee with warrantie and dieth, the wife bringeth a cui in vitâ, the tenant the and recovereth in value, if after the death of the wife the issue bring a praciefe against the alience, he shall vouche and ver in value againe.

] So it is where the wife bringeth a writ of dower against the issue, he shall recover in value, and after her death he shall recover in value againe, upon the same warrantie.
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 and recover in value for the rent; and if after he be impleaded for the land, he shall vouch and recover in value againe for the land: but in these and the like cases, the reason is in respect of the severall estates recovered, but for one and the same estate he shall never recover but once in value; and though the land recovered in value be evicted, yet shall he never take benefit of that warrantie after. And as warranties may be defeated in the whole, so they may be defeated as to part of the benefit that may be taken of the same. [i] As he that hath a warrantie may make a defeasance not to take any benefit by way of voucher: in the like manner that he shall take no advantage by way of warrantia carte, or by way of rebutter.

Sect. 749.

Et est as savoir, que en mesme le manner comme garrantie collateral poil estre defat per matter en fait ou en ley; en mesme le manner poil lineal garrantie estre defat.* &c. Car si l'heire en taile portu breuie de formedon, et un lineal garrantie de son auncester inheritable per force de le taile, soit plede enuers luy, ove cee, que assets a luy descendist de fee simple, † que il ad per mesme l'auncester que jist le garrantie; si l'heire que est demandant poil adnuller et defeater le garrantie, cee suffist a luy: car le discent des autres tenements de fee simple ne fait riens pur barrer l'heire sans le garrantie, &c.

AND it is to be understood, that in the same manner as the collateral warrantie may bee defeated by matter in deed or in law; in the same manner may a lineall warrantie be defeated, &c. For if the heire in taile bringeth a writ of formedon, and a lineall warrantie of his auncester inheritable by force of the taile, bee pleaded against him, with this, that assets descended to him of fee simple, which he hath by the same auncester that made the warrantie; if the heire that is demandant may adnull and defeat the warrantie, that sufficeh him: for the disen of other tenements of fee simple maketh nothing to barre the heire without the warrantie, &c.

HERE Littleton sheweth, that in the same manner that a collateral warrantie may be defeated by matter in deed, or by matter in law, so may to all intents and purposes a lineall warrantie, whereof he putteth an example of a lineall warrantie and assets.

"Et un lineall garrantie, &c. oveque cee que assets a luy dis-""cendist." Here it appeareth by Littleton, that a lineall warrantie and assets is a good plea in a formedon in the descender; wherein it is to be known, that if tenant in taile alieneth with warrantie, and leave assets to descend; if the issue in taile doth alien the assets, and die, the issue of that issue shall recover the land, because the lineall warrantie descendeth only to him without assets; for neither

* &c. not in L. and M. nor Boh.
† que il ad not in L. and M. nor Boh.
Of Warrantie.

neither the pleading of the warrantie without the assets, nor the assets without the warrantie is any barre in the formedon in the discender. But if the issue to whom the warrantie and assets descended had brought a formedon, and by judgement had beene barred by reason of the warrantie and assets; in that case, albeit he alieneth the assets, yet the estate taile is barred for ever; for a barre in a formedon in the discender, which is a writ of the highest nature that an issue in taile can have, is a good barre in any other formedon in the discender, brought afterwards upon the same gift.

ORE jeo ay fait a toy, mon fits, trois livres.

NOW I have made to thee, my sonne, three bookes.

"A TO Y, mon fitz, &c." Here our author calleth (as many times in these bookes he hath done) not only his sonne Richard, but everie student of the law to be accounted his son, and worthy; 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 justly account themselves the sonnes of the law (for otherwise the are not worthy of the profession), our author, as a carefull and provident father, as it hath manifestly appeared, gave excellent instructions in these his bookes, both to his owne sonne, and to his adopted sonnes, to make them from age to age the more apt and able to understand the arguments and reasons of the law.

[394. a.]

Tabula.

Le primer Livre est de Estates que homes ont en terres * ou tenements: c'esteascovoir,

| De Tenant en fee simple     | †† Cap. 1                        |
| De Tenant en feetaile      | 2                                  |
| De Tenant en fee taile apres possibilitie d'issue extinct | 3 |
| De Tenant per le curtesie d'Engleterre | 4 |
| De Tenant en Dower        | 5                                  |
| De Tenant a terme de vie  | 6                                  |
| De Tenant a terme des ans | 7                                  |
| De Tenant a volunt per le common ley | 8       |
| De Tenant a volunt per custome del manner | 9       |

* † et, L. and M. and Roh.
† † The numbers of the Chapters as above are not enumerated either in L. and M. or Roh.
† De tenant per le verge, not in L. and M. nor Roh.
Tabula.

Le Second Livre.*

De Homage  
De Fealtie  
De Escuage  
De Service de Chivaler  
De Socage  
De Frankalmoigne  
De Homage Ancrestel  
De Grand Serjeantie  
De Petit Serjeantie  
De Tenure en Burgage  
De Tenure en Villenage  
† De Rents

Cap. 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

Et ceux deux petits Livres jeo ay fait a toy pur le melod intender de certaine Chapters de les antient Livre de Tenures.

And these two little Books I have made to thee for the better understanding of certaine Chapters of the antient Booke of Tenures.

"MELIOUR entender, &c." And these Institutes have I collected and published to the end that these three Bookes of our author may be the better understood of the studious reader.

"Antient Livre des Tenures." This booke may well be accounted antient, for it was composed in the raigne of king Edward the Third, (as justice Fitzherbert saith) by a grave and discreet man.

Le Tierce Livre.†

De Parceners || solonque le course del common ley
† De Parceners solonque le custome
De Jointenants
De || Tenants en common
De Estates de terres et tenements sur condition
De Discent que tollent entries
De Continual Claine
De Releases
De Confirmations
De Alltermements
De Discontinuances
De R. mitters
De Garranties §

Cap. 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

* est added L. and M. and Roh.
† Rents—iii. maners de rentes, scilicet, rent service, rent charge, et rent sekke, L. and M. and Roh.
‡ est added L. and M. and Roh.
§ solonque le course del common ley, not in L. and M. and Roh.
¶ De parceners solonque le custome, not in L. and M. nor Roh.
¶ Tenants—tenements, L. and M. and Roh.
§ scilicet, garranties lyneali, garranties laterali, et garranties que commence per deun sin, added L. and M. and Roh.

* Epilogue.
* Epilogus.

ET saches, mon fils, que je ne voie que tu croies, que tout ce que je ay dit en les dits livres soit ley, car je ne cce voie enprendre ne presumer sur moy. Mes de tiels choses que ne sont pas ley, enquières et apprendres de mes sages masters apprisnes en la ley. Nient meins coment que certaines choses quez sont moles et specifles en les dits livres, ne sont pas ley, uncore tielx choses ferra toy plus apt et able de entendre et apprendre les arguments et les reasons del ley, &c. Car per les arguments et les reasons en la ley, home plus tost axienda a le certaintie et a la conusans de la ley.

AND know, my son, that I would not have thee beleve, that all which I have said in these bookes is law, for I will not presume to take this upon me. But of those things that are not law, inquired and learnne of my wise masters learned in the law. Notwithstanding albeit that certaine things which are moved and specified in the sayd bookes, are not altogether law, yet such things shall make thee more apt, and able to understand 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 certaintie and knowledge of the law.

Lex plus laudatur quando ratione probatur.

*JEO ne voile enprendere de presumer, &c.* Here observe the great modestie and mildnesse of our author, which is worthy of imitation; for *Nulla virtus, nulla scientia locum suum et dignitatem conservare 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 suin in terris*, as the holy historie testifieth of him.

*Les arguments et les reasons del ley, &c.* *Ratio est anima legis;* for then are we said 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 wee perfectly understand it as our owne; and then, and never before, we have such an excellent and inseparable propertie and ownership therein, as wee can neither lose it, nor any man take it from us, and will direct us (the learning of the law is so chained 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 long to retaine it in your memorie. And [395. a.] wel doth our author couple arguments and reasons together, *Quia argumenta ignota et obscura ad lucem rationis proferunt et reddunt splendida*: and therefore *argumentari et ratiocinari* are many times taken for one. And that our author may not speake any thing without authority, (which in these Institutes we have as we take it manifested) his opinion herein also agreeith with that of the learned and reverend chief justice of the court of common pleas, sir *Richard Hankford, [y] Home ne scaveria de quel metal un campane est, et so soit bien bate, ne le ley bien conus sans disputacion. And another saith,
Epilogus.

saith, [+] Jeo aye dispute cest matter purs la apprendre la ley. So as our author hath made a most excellent epilogue or conclusion with a grave advice and counsel, together with the reason thereof, which all good students are to know and follow; and with scire and sequi I will conclude our author's epilogue.

"Lex plus laudatur quando ratione probatur."

This is the fourth time that our author hath cited verses.

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 diversities between cases and points of learning; the varietie almost infinite of authorities, antient, constant and moderne, and withall their amiable and admirable consent in so many successions of ages; the many changes and alterations of the common law, and additions to the same, even since our author wrote, by many acts of parliament, and that the like worke of Institutes had not been attempted by any of our profession whom I might imitate, I thought it safe for me to follow the grave and prudent example of our worthy author, not to take upon me, or presume that the reader should thinke that all that I have said herein to be law: yet this I may safely affirme, 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 move him to doubt, and withall to enable him to inquire and learne of the sages, what the law, together with the true reason thereof, in these cases is: or lastly, upon consideration had of our old bookes, lawes, and records, (which are full of venerable dignitie and antiquitie) to finde out where any alteration hath beene, upon what ground the law hath beene since changed; knowing for certaine, that the law is unknown to him that knoweth not the reason thereof, and that the knowne certaintie of the law is the safetie of all. I had once intended, for the ease of our student, to have made a Table to these Institutes; but when I considered that Tables and Abridgements are most profitable to them that make them, I have left that worke to everie studious reader. And for a farewell to our jurisprudent, I wish unto him the gladsome light of jurisprudence, the lovelinesse of temperance, the stabilitie of fortitude, and the soliditie of justice.

FINIS.
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- Ability. *Vide Capacity.*
- Abjuration and Exile.
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- Admiral.
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