Sect. 298. (1)

(Cro. Cha. 75. Ant. 183. a. b.)

AND the reason is, because they have severall freeholds and an occupation *pro indiviso*.

(2. Ro. Abr. 89. 90. Ant. 183. b.)

Here is to bee observed, that the *habendum* doth sever the premises that *primâ facie* seemed to be joynt; for an expresse estate controlls an implyed estate, as hath beene said.

ITEM si terres soient dones a deux a aver, et tener, s. l'un moitie a l'un et a ses heires, et l'auter moity a l'auter et a ses heires, ils sont tenants en common.

ALSO if lands bee given to two to have and to hold, s. the one moity to the one and to his heires, and the other moity to the other & to his heires, they are tenants in common.

Sect. 299.

11. Ass. pl. 16.

45. E. 3. 12. 44. Ass. 11.

21. E. 4. 22. b.

AND the like law is, if the feoffment bee made of a third part or a fourth part, &c. And if there be an advowson appendant, they are also tenants in common of the advowson. (3) And albeit it is said, that such a feoffment of a moitie or third part, &c. is not good without writing, for that (as they say) a man cannot create an uncertain estate in land by parol; yet is the law cleere, that such a feoffment is good by parol without writing, and such an uncertaine estate shall passe by livery, and so it appeareth in our bookes.

ITEM si home seisie de certain terres enfeoffa un auter de le moitie de mesme la terre sans ascun parlance de assignment ou limitation de mesme la moitie en severaltie al temps del feoffment, donques le feoffee & le feoffor tiendront lour parts de la terre en common.

ALSO if a man seised of certaine lands infeoffe another of the moitie of the same land without any speech of assignement or limitation of the same moity in severaltie at the time of the feoffment, then the feoffee and the feoffor shall hold their parts of the land in common (2).

21. E. 4. 22. b.

5. E. 3. 23. 67. Temps E. 1. Feoffments 115. 34. E. 1. quar. imped. 179. 10. Eliz. Dyer 28. 22. E. 3. 6. Feoffments 116. 6. E. 3. 56. 39. E. 3. 38. 9. E. 3. 16. 17. E. 3. 3. 18. E. 3. 43. 43. E. 3. 26. 23. Ass. 8. 33. H. 6. 5. a. (Post. 333. b. Cro. Cha. 433. Cro. Jam. 15.)

If a verdict finde, that a man hath *duas partes manerii, &c. in tres partes divisas*, this shall not be intended to be in common; but if verdict bee *in tres partes dividendas*, then it seemeth that they are tenants in common by the intendment of the verdict. (4)

But if a man be seised of a mannor whereunto an advowson is appendant, and maketh a feoffment of three acres parcell of the mannor together with the advowson to two, to have and to hold the one moity together with the moitie of the advowson to the one and his heires, and the other moity together with the other moity of the advowson to the other and his heires, this cannot be good without deed; for the feoffor cannot annex the advowson to these three acres, and disannex it from the rest of the mannor, without deed. (5)

Sect. 300.

ET est ascavoir, que en mesme le maner come est avantdit de tenants en common, de terres ou tenements en fee simple, ou en fee taile, en mesme le maner poit estre

AND it is to bee understood, that in the same manner as is aforesaid of tenants in common, of lands or tenements in fee simple, or in fee taile, in the same

de

(1) In L. & M. and Roh. this section is placed immediately after sect. 300.

(2) Brooke in his Abridgment title *feoffements de terres* pl. 75. cites this section of Littleton, and in support of it refers to various cases in Fitzherbert's Abridgment. See further Bro. Nouv. Cas. 154. 124. 6. Co. 1. and Dy. 187. a. pl. 5.

(3) See post. 307. a.

(4) In a case in the king's bench during lord Holt's time, the question was, how the surrender of a copyhold to the use of three sons and two daughters *equally to be divided* and their *respective* heirs ought to be construed; and this passage of the Coke upon Littleton was much relied upon by two of the judges as an authority to shew, that the words *equally to be divided* imply a *tenancy in common*. But lord Holt, who was for a *jointenancy*, observed, that no such matter appears in the case of 21. E. 4. here cited by lord Coke in the margin as his authority, and that he was not positive therein, but only wrote it as his conjecture. 1. P. Wms. 19. in the case of Fisher *v.* Wigg, which is also reported in Salk. 391. Com. 88. 92. 12. Mod. 296. and 1. L. Raym. 622. In the two latter books and in P. Williams this case is reported very much at large; and as the arguments on each side are very elaborate, it is an authority fit to be resorted to, wherever the doubt is, whether there shall be a tenancy in common or jointenancy. See also the case of the earl of Anglesey *v.* Ram. in Dom. Proc. Sept. 1727. Barker *v.* Gyles 2. P. Wms. 280. and 3. Brown. Parl. Cas. 297. Hall *v.* Digby and others 4. Brown. Parl. Cas. 224. Hawes *v.* Hawes 1. Wilf. 165. and Gaskin *v.* Gaskin Mich. 18. G. 3. B. R. in mr. Henry Cowper's Reports just published. In this last case the word *equally* was deemed sufficient to create a tenancy in common in a *will*; and lord Mansfield declared the opinion of the two judges who differed from Holt to be the better and more liberal one; and mr. justice Aston noticed, that *equally to be divided* had been adjudged a *tenancy* in common even in a *deed*. I am happy in having this early opportunity of citing a collection of reports, which promises so much new and useful information to the profession. See further as to the words sufficient to make a tenancy in common, particularly the cases in equity on the subject, 2. Com. Dig. 175. and continuation to the same work 201.

(5) Besides the references in the margin, see Dy. 48. b. pl. 3. and Doderidge on Advowsons 30.

TO THE

PURCHASERS

OF THE

NEW EDITION

OF

COKE UPON LITTLETON.

MR. HARGRAVE, the editor of ſo much of the NEW EDITION of COKE UPON LITTLETON as has been publiſhed, at length finds his relinquiſhment of the undertaking in an unfiniſhed ſtate quite unavoidable. Numerous and ſevere are the ſacrifices, which he has heretofore made in order to accompliſh the original propoſals in their fulleſt extent. To this moment he feels the effect of thoſe ſacrifices; nor is he likely ever to conquer wholly the diſadvantage already incurred from them. But it might be improper and diſguſting to enter into particulars upon this head, which in its nature is too perſonal to the editor to be intereſting to others. He will therefore be content with generally declaring, that his ſituation is become ſuch, as to render him unequal to any longer ſuſtaining the weight of thoſe labors, which he has ever found incident to the work upon the extended plan of annotation adopted by him from the commencement of the edition, though certainly not belonging to it from the very limited profeſſions and terms originally held out to the Publick. It is from perſonal conſiderations, and in his own defence, that he thus adverts to having paſſed the bounds of the firſt undertaking in the actual execution: becauſe, as he feels himſelf open to cenſure, from thoſe indiſpoſed to yield to indulgent conſtruction, for having done *leſs* than he promiſed, he too plainly ſees the neceſſity of ſtriving to ſoften ſuch cenſure by the recollection of his having alſo done *more*. In truth, had he not raſhly exceeded the limits firſt preſcribed, by wandering into the wide field of annotation, it is moſt probable, that the *whole* of the edition would have been finiſhed long ago, and conſequently that the editor would not now have to mortify himſelf by apologizing for executing only *one half* of it *. This to be ſure is the moſt favourable point of view for the editor; its tendency being to ſhew, that his exceſs of zeal to render the edition *valuable* has been one cauſe of his finally leaving it *imperfect*. If it ſhall be thought proper by others kindly to receive the editor's apology in this form,

it

* The COKE upon LITTLETON, excluſive of the preface and index, conſiſts of 393 folios or 786 pages. Mr. HARGRAVE has proceeded in the new edition and actually publiſhed to the end of folio 190 or page 380, which is exactly 13 folios ſhort of one half of the work.

it will qualify his unhappineſs at the painful and trying moment of ſeparation from a very favorite work before its advancement into maturity. Should a leſs indulgent conſtruction be applied to the editor, it will deeply wound feelings already enough exerciſed; but from a conſciouſneſs of being open to ſome degree of exception for what rigid obſervers may ſtile an indefenſible abandonment of a work long promiſed to be compleated, he muſt in that caſe kiſs the rod, and ſubmit himſelf to the ſeverity of animadverſion with a patient humility.

It is no ſmall conſolation to Mr. Hargrave to accompany this recital of his own failure in the edition, with information of its having fallen into the hands of a profeſſional gentleman * of ſuch a deſcription, as to warrant expecting from him a quick and able execution of the remainder of the undertaking. As Mr. Hargrave underſtands, his ſucceſſor is prompted to engage in the work by an extreme partiality for it, and from having been in the habit of ſtudying and annotating on the Coke upon Littleton. He alſo poſſeſſes the important advantage of having long practiſed in the conveyancing line; to which, as Mr. Hargrave can ſpeak from his own experience as a barriſter in that branch of the law, a familiarity with the law of real property, and conſequently with the writings of Littleton and Coke, is peculiarly eſſential. Theſe and other conſiderations claim from Mr. Hargrave much beyond a hope, that the depending edition of Coke upon Littleton will gain conſiderably by change of the editor; and that the new adventurer in this arduous undertaking will ſtamp the remainder of the edition with much greater value, than could be reached by any efforts however vigorous from the original editor.

FRA. HARGRAVE.

Boſwell Court, 18 *Jan.* 1785.

* Charles Butler, of Lincoln's Inn, Eſquire.

ADDRESS

FROM

Mr. HARGRAVE,

TO THE

PURCHASERS of the NEW EDITION of COKE upon LITTLETON,

Announcing his Relinquiſhment of the Undertaking, and Mr. BUTLER's ſucceeding to it.

Arms fol. 186. 27. a.

Right of Jury to involve law. n. 5. 55. b.

On King's consulting judges extra-judicially. n. 5. 110. — but it is inserted at ye bottom of 112. a.

On Dispensing Power. n. 1. 99. a. & n. 3. 120. a. & 4. n. ibid.

In the right in which Bishops sit in the House of Lords. 90. b. 94. a. 134. b.

On new & old Deaneries. 95.

Black & Red Books of Exchequer. 69. a.

Protections. 130. to end of 131. b.

~~Vetita~~
Initia Pars. 166. a.

Right of jury to involve law in
their verdict, as well in civil as criminal cases. Vide Vol 5. In
fol. 155. b.

Deaneries old & new, fol. 95.

[illegible]

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 miseræ ludibria chartæ ?
Hoc lege, quod possis dicere jure meum est. MART.

Major hæreditas venit unicuique nostrum à jure et legibus, quàm à parentibus. CICERO.

Hæc ego grandævus posui tibi, candide lector,

Authore EDWARDO COKE, MILITE.

THE THIRTEENTH EDITION,

REVISED AND CORRECTED.

WITH THE ADDITION OF

NOTES and REFERENCES,

FROM THE BEGINNING TO FOLIO 19^{a} INCLUSIVE,

By FRANCIS HARGRAVE, Esq. of Lincoln's-Inn.

AND FROM FOLIO 19^{b} TO THE END,

With the PREFACE and INDEX to the NOTES,

By CHARLES BUTLER, Esq. of Lincoln's-Inn.

AND

An ANALYSIS of LITTLETON,

Written by an Unknown Hand in 1658-9, but never before published.

LONDON:

PRINTED BY T. WRIGHT,

For E. BROOKE, (Successor to Messrs. WORRALL and TOVEY), BELL-YARD, near TEMPLE-BAR.

M,DCC,LXXXVIII.

TO THE RIGHT HONOURABLE

EDWARD, LORD THURLOW,

BARON THURLOW OF ASHFIELD,

IN THE COUNTY OF SUFFOLK,

LORD HIGH CHANCELLOR

OF

GREAT-BRITAIN,

THIS WORK

IS,

WITH HIS LORDSHIP'S PERMISSION,

RESPECTFULLY DEDICATED.

ADDRESS

FROM

MR. HARGRAVE,

ANNOUNCING HIS RELINQUISHMENT OF THIS WORK, &c.

MR. HARGRAVE, the editor of ſo much of the NEW EDITION of COKE UPON LITTLETON as has been publiſhed, at length finds his relinquiſhment of the undertaking in an unfiniſhed ſtate quite unavoidable. Numerous and ſevere are the ſacrifices, which he has heretofore made in order to accompliſh the original propoſals in their fulleſt extent. To this moment he feels the effect of thoſe ſacrifices; nor is he likely ever to conquer wholly the diſadvantage already incurred from them. But it might be improper and diſguſting to enter into particulars upon this head, which in its nature is too perſonal to the editor to be intereſting to others. He will therefore be content with generally declaring, that his ſituation is become ſuch, as to render him unequal to any longer ſuſtaining the weight of thoſe labors, which he has ever found incident to the work upon the extended plan of annotation adopted by him from the commencement of the edition, though certainly not belonging to it from the very limited profeſſions and terms originally held out to the Public. It is from perſonal conſiderations, and in his own defence, that he thus adverts to having paſſed the bounds of the firſt undertaking in the actual execution: becauſe, as he feels himſelf open to cenſure, from thoſe indiſpoſed to yield to indulgent conſtruction, for having done LESS than he promiſed, he too plainly ſees the neceſſity of ſtriving to ſoften ſuch cenſure by the recollection of his having alſo done MORE. In truth, had he not raſhly exceeded the limits firſt preſcribed, by wandering into the wide field of annotation, it is moſt probable, that the WHOLE of the edition would have been finiſhed long ago, and conſequently that the editor would not now have to mortify himſelf by apologizing for executing only ONE HALF of it *. This to be ſure is the moſt favourable point of view for the editor; its tendency being to ſhew, that his exceſs of zeal to render the edition VALUABLE has been one cauſe of his finally leaving it IMPERFECT. If it ſhall be thought proper by others kindly to receive the editor's apology in this form, it will qualify his unhappineſs at the painful and trying moment of ſeparation from a very favorite work before its advancement into maturity. Should a leſs indulgent conſtruction be applied to the editor, it will deeply wound feelings already enough exerciſed; but from a conſciouſneſs of being open to ſome degree of exception for what rigid obſervers may ſtile an indefenſible abandonment of a work ſo long promiſed to be compleated, he muſt in that caſe kiſs the rod, and ſubmit himſelf to the ſeverity of animadverſion with a patient humility.

It is no ſmall conſolation to Mr. Hargrave to accompany this recital of his failure in the edition, with information of its having fallen into the hands of a profeſſional gentleman † of ſuch a deſcription, as to warrant expecting from him a quick and able execution of the remainder of the undertaking. As Mr. Hargrave underſtands, his ſucceſſor is prompted to engage in the work by an extreme partiality for it, and from having been in the habit of ſtudying and annotating on the COKE UPON LITTLETON. He alſo poſſeſſes the important advantage of having long practiſed in the conveyancing line; to which, as Mr. Hargrave can ſpeak from his own experience as a barriſter in that branch of the law, a familiarity with the law of real property, and conſequently with the writings of LITTLETON and COKE, is peculiarly eſſential. Theſe and other conſiderations claim from Mr. Hargrave much beyond a hope, that the depending edition of COKE UPON LITTLETON will gain conſiderably by change of the editor; and that the new adventurer in this arduous undertaking will ſtamp the remainder of the edition with much greater value than could be reached by any efforts however vigorous from the original editor,

FRA. HARGRAVE.

Beſwell-Court, 18 Jan. 1785.

* The COKE upon LITTLETON, excluſive of the Preface and Index, conſiſts of 393 folios or 786 pages. Mr. HARGRAVE has proceeded in the new edition and actually publiſhed to the end of folio 190 or page 380, which is exactly 13 folios ſhort of one half of the work.

† CHARLES BUTLER, of Lincoln's-Inn, Eſquire.

IN the original propoſals for printing this work, it was mentioned to be then intended to include in it Lord COKE's *Compleat Copyholder, and the other Tracts which had been printed with ſome of the latter editions of the* COKE UPON LITTLETON: *It has, however, on further conſideration been thought adviſeable to omit them, as having no immediate connection with this work; as alſo to avoid an unneceſſary addition to the bulk and expence of the preſent volume. The inſertion of them in this place, was apprehended to be the leſs neceſſary, a ſeparate collection of them being already publiſhed in an octavo volume.*

PREFACE

TO THE

PRESENT EDITION.

General obſervations on Littleton's Tenures.

THE reputation of LITTLETON's TREATISE on TENURES is too well eſtabliſhed, to require any mention of the praiſes which the moſt reſpectable writers of our country have beſtowed on it. No work on our laws has been more warmly or generally applauded by them. But ſome foreign writers have ſpoken of it in very different terms. At the head of theſe is Hottoman, who, in his Treatiſe "De Verbis feudalibus," thus expreſſes himſelf: "Stephanus Paſquerius excellenti vir ingenio, et inter Pariſienſes cauſidicos dicendi facultate "præſtans, libellum mihi Anglicanum Littletonium dedit, quo Feudorum Anglicorum Jura "exponuntur, ita inconditè, abſurdè, et inconcinnè ſcriptum, ut facilè appareat, veriſſimum "eſſe, quod Polydorus Virgilius, in Anglicâ Hiſtoriâ, de Jure Anglicano teſtatus eſt, ſtulti-"tiam in eo libro, cum malitiâ, et calumniandi ſtudio, certare." This paſſage from Hottoman is cited without any diſapprobation in the 6th edition of Struvius's Bibliotheca Juris Selecta; but in the 8th edition of that work (Jenæ 1756) it is qualified by the words "ſingularia ſed parum apta ſunt, quæ Franciſcus Hottomanus profert, &c." Gatzert, in his "Commentatio Juris exotici Hiſtorico-Literaria de Jure communi Angliæ," (Gottingen 1765) gives the following account of Littleton and his works: "Æqualis huic, tempore, aſt "doctrinâ, famâ et meritis longe ſuperior fuit, immortalitatem nominis apud poſteros, ſi quis "unquam merito conſecutus, Thomas Littleton; a quo juris ſtudium inchoant hodie Angli, "plane ut ſuum olim, ab edicto Prætoris et XII Tabulis, Romani. Hic igitur ICtus, ab-"ſolutis diſciplinis academicis, jura patria mox cum plauſu in Interiori Templo Londinenſi, "quæ paulo ante ibidem didicerat, aliquantum temporis profeſſus, ab Henrico VI. ad officium "primo judicandi in curia Palatii vocatus eſt. Advocati deinde ac procuratoris regii (king's "ſerjeant) muneri a° 1455 admotus, judexque porro ambulatorius factus provincialis, (juſtice "of aſſizes) et tandem inter judicantes communium placitorum curiæ a° 1466 ab Edoardo IV. "relatus dignus habitus eſt, qui multum ampliori, quam ſolebat, ſtipendio ordiniſque adeo "Balnei honoribus a° 1475 donaretur. Vivere deſiit a° 1533 *.—Unicum librum ſcripſit, ſed "qui plurium loco eſt, ſi ſpectas eruditionem et argumentum. In eo excuſſit doctrinam juris "patrii difficillimam, graviſſimam, uſuque quotidiano maxime commendabilem; qualia "nempe, et quotuplicia ſint feuda Angliæ, quænam eorum jura, obligationes, præſtationes "atque ſervitia. In uſus quidem Richardi filii, et aliorum quorundam ad explicanda illis "capita aliquot opuſculi DE TENURIS ab incerto auctore Edoardi III. ævo conſcripti: "Gallice primo fuit compoſitus, mox Gallice deinde ſæpius et Anglice, mox vero Gallice et "Latine, typis excuſus. Viginti quinque ſervitiorum feudalium genera ſtatuit, quæ tribus "libris, in quos omne opus diſpertitur, perſecutus eſt. Titulum hunc eſſe voluit OF TE-"NURES. In anno editionis originariæ a Cokio qui a° 1533 ponit diſſentiunt, eamque circa "a° 1477 non diu poſt inventam typographiæ artem prodiiſſe, valde vero ſimiliter ſtatuunt "Biographi Brit. vol. V. qui cum Nicolſono, p. 233. late etiam de argumento imprimis, et "diviſione libri agunt. Editio duodecima 1738 lucem vidit. Cokius in præfatione ſui ad "Littletonum Commentarii, de quo mox diſſeram, inter plura quæ auctorem concernunt ejuſ-"que opus, XV. ICtos nominis magni alios appellat, qui eodem tempore floruerunt. Exhibet "præterea imaginem Littletonianam. Cæterùm liber ob methodi brevitatem, argumentandi "ſubtilitatem, atque dictorum ordinem, laudem omnino meretur; ſed nec minus fatendum "eſt, adeo ſæpiſſime obſcuritati bonum hominem ſtuduiſſe, ut ænigmata legum maluiſſe, "quam præcepta, tradere videatur. Multa jam immutata eſſe, plura inveterata atque obſo-"leta, non urgeo. Interim communis ICtorum Anglorum hæc vox eſt perfectiſſimum et ab-"ſolutiſſimum hoc opus eſſe ex omnibus quæ unquam in ulla ſcientia humana ſcripta ſint quæ "unquam proferre potuerit hominis ingenium; non intelligere qui culpent. Ita parum abeſt, "quin credant, falli eum ſuiſſe neſcium!"

The Engliſh reader will probably be ſurpriſed at theſe accounts of Littleton. Hottoman has the reputation of great learning, and elegant writing; but he has been blamed very generally for the contemptuous language with which he ſpeaks, even of the writers of his own civil law.

* This is a ſtrange miſtake, as Littleton died in 1482.

Gravina,

PREFACE TO THE PRESENT EDITION.

Gravina, while he mentions his endowments, both natural and acquired, with admiration, cenſures his abuſe of other judicial writers with great ſeverity. Speaking of him, he ſays, "Non modo in Accurſianis et Bartolinis interpretibus reprehendendis, ſed in ipſo Triboniano "perpetuo exagitando, collectam totâ vitâ opinionem verecundiæ atque modeſtiæ, prorſus "amiſit." Grav. lib. 1. § 179.

Cujas alſo was ſuppoſed to allude to him in a paſſage of his works, where having occaſion to mention the writers who find fault with the diſpoſition and arrangement of the civil law, he ſays, "Quam illi ſunt imperitiſſimi! nam neque quid ars ſit ſciunt; neque artem digeſtorum "aut principia certa juris ulla perceperunt unquam; ſuaves tamen ad ridendi materiam."

But Hottoman's general diſpoſition to abuſe, is not the only circumſtance by which his virulent cenſure of Littleton may be accounted for. Full of the doctrines of the feudal laws of his own country, he might expect to find doctrines of a ſimilar nature in Littleton, without adverting that the greateſt part of Littleton's work treats of the ſubordinate and practical part of the laws of England, which, like that of every other country, is in a great degree peculiar to itſelf, and bears but a remote analogy to thoſe of other countries. It is allowed, that the feudal polity of the different countries of Europe, is derived from the ſame origin; that there is a marked ſimilitude in their principal inſtitutions; and a ſingular uniformity in the hiſtory of their riſe, perfection, decline, and fall. But the more we go from a general view of their conſtitutions and governments, to their particular laws and cuſtoms, the leſs this ſimilitude and uniformity are diſcoverable.

Thus the hiſtory of every country, where the feudal laws have prevailed, while it preſents us, on the one hand, with an account of the many reſtraints impoſed by them upon alienation, and of the many methods which have been taken to make property unalienable, preſents us, on the other, with an account of the different arts which have been uſed to elude thoſe reſtraints, and to make property free. This is as obſervable in the law of England, as it is in the law of any other country.

But the mode by which it has been effected in England, is peculiar to England. In other countries, where a liberty of alienation has been introduced, it has reſted on a kind of compromiſe with the lord, by paying him a certain fine; and a kind of compromiſe with the relations of the feudatory, by allowing them a right of redemption, commonly called the "jus retractus." But the ſteps by which a free alienation of property has obtained ground in England are very different. In England an unlimited freedom of aliening ſocage and military land was ſoon allowed; the practice of ſub-infeudation was ſoon aboliſhed; the alienation of lands was reſtrained by the introduction of conditional fees, and afterwards by the introduction of eſtates tail; entails from their firſt eſtabliſhment were greatly diſcountenanced by the courts of juſtice, and they were eluded by the doctrines of diſcontinuance and warranty. In the courſe of time, a fine was made a bar to the claims of the iſſue in tail, and a common recovery to the claims both of the iſſue and of thoſe in remainder and reverſion. Moſt of theſe circumſtances are peculiar to the Hiſtory of England: hence an Engliſh reader, who opens the writings of the foreign feudiſts, with an expectation of finding there ſomething applicable to the practical parts of the law of his own country, reſpecting the alienation of landed property, will be greatly diſappointed. He will find the moſt poſitive prohibition of aliening the fee without the conſent of the lord: he will find very nice and ſubtle diſquiſitions of what amounts to an alienation: he will find that, in ſome countries, the lord's conſent ſtill continues a favour, that in others it is a right, which the tenant may claim on rendering a certain fine. In ſhort, he will find the works of foreign feudiſts filled with accounts of the "jus "retractus," or "droit de rachat," the "retraite lignager," and the "droit des lods et des "ventes;" but he will hardly find the words, or any thing equivalent to the words, conditional fee, eſtate tail, diſcontinuance, warranty, fine, or recovery, in the ſenſe in which we uſe them.

The ſame may be obſerved on the doctrine of conditions. According to the ſtrict principles of the feudal law, no conditions could be annexed to a fief, except the implied conditions to which every fief was ſubject, from the obligation of ſervice on the part of the tenant, and the obligation of protection on the part of the lord. Every fief to which any expreſs or conventionary condition was annexed, was, from that very circumſtance, ranked among improper fiefs. But fiefs in England were at all times ſuſceptible of every kind of condition.

It would be eaſy to purſue theſe obſervations through the ſubſequent chapters of Littleton's Treatiſe. Even if we conſider the ſubject on a more extenſive ſcale, we ſhall find ſome circumſtances peculiar to the Engliſh law, which muſt neceſſarily occaſion a very eſſential and marked difference between the conſtitution and forms of the government of England and the conſtitution and forms of the government of other countries. Such are the univerſal converſion of allodial lands into fiefs; the total abolition of ſub-infeudation; the freedom of alienation of eſtates in fee-ſimple; and the limited and dependant ſituation of our nobility when contraſted with the ſituation of the high nobility of foreign countries: all theſe are peculiar in a great meaſure to our laws. It follows, that our writers muſt be ſilent on many of the topics which fill the immenſe volumes of foreign feudiſts: and they, from the ſame circumſtance, muſt be equally ſilent on many of the ſubjects which are diſcuſſed by our writers. That this is ſo, will appear to every perſon converſant with the ancient writers on our laws, who will give a curſory look at the writers on the feudal laws of other countries. Nothing in this reſpect can be more

* The title of this work is, "Oceanus Juris, ſive Tractatus Tractatuum Juris univerſi, duce et auſpice Gregorio 13. in unum "congeſti, a Fr. Zilletti." There are two editions of this work, both printed at Venice; the firſt in 1548, the ſecond in 1584. The firſt edition is in 16 tomes, generally bound in 12 volumes; the ſecond is in 18 tomes, generally bound in 29 volumes. The arrangement of this work is greatly admired; but it is not a work in great requeſt, even in thoſe countries which are governed by the civil law.

different

different than thoſe parts of the writings of Bracton, Britton, Fleta, Littleton, ſir Edward Coke, and ſir William Blackſtone, which treat of landed property, and the books of the fiefs, Cujas's Commentary upon them, the various treatiſes on feudal matters collected in the 10th and 11th volumes of the "Tractatus Tractatuum *, Du Moulins's Commentarii in pri-" ores tres Titulos Conſuetudinis Pariſienſis †," or the more modern treatiſes of Monſieur Germain Antoine Guyot ‡, and Monſieur Hervé §.

Theſe obſervations are offered with a view to account for the contemptuous manner in which the two foreign writers, cited above, ſpeak of Littleton. They may alſo account, in ſome meaſure, for a circumſtance which has been a matter of ſome ſurprize, the total ſilence of ſir Edward Coke on the general doctrine of fiefs. It is obvious, how extremely deſirous his lordſhip is upon every occaſion to give the reaſons of the doctrines laid down by him; and what forced, and ſometimes even puerile reaſons, he aſſigns for them: yet though ſo much of our law is ſuppoſed to depend upon feudal principles, he never once mentions the feudal law.

"I do marvel many times, ſays ſir Henry Spelman, that my lord Coke, adorning our law "with ſo many flowers of antiquity and foreign learning, hath not (as I ſuppoſe) turned aſide "into this field, i. e. feudal learning, from whence ſo many roots of our law have, of old, "been taken and tranſplanted. I wiſh ſome worthy would read them diligently, and ſhew "the ſeveral heads from whence thoſe of ours are taken. They beyond the ſeas are not only "diligent, but very curious in this kind; but we are all for profit and 'lucrando pane,' "taking what we find at market, without enquiring whence it came." But this complaint is open to obſervation.

There is no doubt but our laws reſpecting landed property are ſuſceptible of great illuſtration from a recurrence to the general hiſtory and principles of the feudal law. This is evident from the writings of lord chief baron Gilbert, particularly his treatiſe of Tenures, in which he has very ſucceſsfully explained, by feudal principles, ſeveral of the leading points of the doctrines laid down in the works of Littleton and ſir Edward Coke, and ſhewn the real grounds of ſeveral of their diſtinctions, which otherwiſe appear to be merely arbitrary. By this he has reduced them to a degree of ſyſtem, of which till then they did not appear ſuſceptible. His treatiſe, therefore, cannot be too much recommended to every perſon who wiſhes to make himſelf a complete maſter of the extenſive and various learning contained in the works of thoſe writers. The ſame may be ſaid of the writings of ſir William Blackſtone. Much uſeful information may be derived alſo from other writers on theſe ſubjects.

But the reader, whoſe aim is to qualify himſelf for the practice of his profeſſion, cannot be adviſed to extend his reſearches upon thoſe ſubjects very far. The points of feudal learning, which ſerve to explain or illuſtrate the juriſprudence of England, are few in number, and may be found in the authors we have mentioned.

It is not impoſſible but further enquiries might lead to other intereſting diſcoveries. But the knowledge abſolutely neceſſary for every perſon to poſſeſs who is to practiſe the law with credit to himſelf and advantage to his clients, is of ſo very abſtruſe a nature, and comprehends ſuch a variety of different matters, that the utmoſt time, which the compaſs of a life allows for the ſtudy, is not more than ſufficient for the acquiſition of that branch of knowledge only; ſtill leſs will it allow him to enter upon the immenſe field of *foreign* feudality. It were greatly to be wiſhed that ſome gentleman, poſſeſſed of ſufficient time, talents, and aſſiduity, would dedicate them to this ſtudy. Thoſe who have read the late doctor GILBERT STEWART'S "View of Society in Europe, in its Progreſs from Rudeneſs to Refinement," will lament that he did not purſue his enquiries on this ſubject. From ſuch a writer, a work on this ſubject might be expected, at once entertaining, intereſting, and inſtructive; but ſuch a work is not to be expected from a practiſing lawyer. Whatever may be the energies of his mind, his induſtry, his application and activity, he will ſoon feel, that to gain an accurate and extenſive knowledge of the law, as it is practiſed in our courts of juſtice, requires them all. Thus, on the one hand, the ſtudent will find an advantage in ſome degree of reſearch into feudal learning; on the other, he will feel it neceſſary to bound his reſearches, and to leave, before he has made any great progreſs in them, the Book of Fiefs, and its commentators, for Littleton's Tenures and ſir Edward Coke's Commentary.

If it were proper to enter into a further defence of Littleton, it might be done, by obſerving, that it muſt be a matter of great doubt, whether Hottoman ever ſaw, or Gatzert more than few, the work they ſo ſeverely cenſure. Hottoman, if he had read it, *might* think it inelegant and abſurd; but he *could not* think it malicious, or indicative of a diſpoſition to ſlander. Gatzert ſays Littleton ſpecifies twenty-five kinds of feudal ſervices. It is probable, that by ſervices he meant tenures: if he did, it is obvious that he confounded thoſe chapters of Littleton which

† This is uſually the firſt treatiſe printed in the general collection of his works. An abridgement of it was publiſhed in 1773 by Mr. Henrion de Penſey, under the title of "Traité des Fiefs de Du Moulin, Analyſé et Conferé avec les autres Feudiſtes."

‡ The title of his work is, "Traité des Matieres Feodales, tant pour le Pays Coutumier que pour celuy du Droit ecrit, avec "des Obſervations. Par Germain Antoine Guyot. Paris, 1738. and Ann. Suiv. 7 vol. in 4to."

§ "Theorie des Matieres Feodales et Conſuelles, ou l'on developpe la Chaine de ces Matieres, dans un Ordre et ſous un Aſpect, "qui en facilitent l'intelligence, y repandent de nouvelles Lumieres, et menent a des Definitions neuves des Contrats de Fiefs, & de "Cens. Par Monſieur Hervé. 1785. Paris. 6 vol. in 8vo." The firſt volume of this work contains an hiſtorical account of the riſe, progreſs, and preſent ſtate of Fiefs in France. In 1756, Monſieur Bouquet publiſhed one volume of a work entitled, "Le Droit Public de la France." In his preface to it he promiſed to continue and complete it in two more volumes, but he is ſince dead, without having publiſhed any part of the continuation; a circumſtance greatly to be regretted by the lovers of this kind of learning, as the firſt volume is executed in a maſterly manner. The Engliſh reader will perhaps find it the moſt intereſting and inſtructive work that has yet appeared on the ſubject in the French language. If the reader wiſhes to purſue his reſearches on the ſubject, he will find ſome aſſiſtance from a ſmall work printed at Francfort in 1779, entitled, "Joannis Adami "Koppii Hiſteria Juris Scientiæ Rommæ Feodalis Privatæ & Publicæ, 1 vol. 8vo."

treat of the nature of the feudal eſtate, with thoſe chapters which treat of the nature of the feudal tenure: in every other ſenſe the word Services, applied in this manner to Littleton's work, is without a meaning.—Beſides, he mentions Latin editions of Littleton, when no edition in that language ever appeared.

In fact, were it not for the general obſervations to which they naturally give riſe, neither the criticiſm of Hottoman nor that of Gatzert would have been noticed.

When doctor Cowell, in his Law Dictionary, cited the paſſage in queſtion from Hottoman, it raiſed univerſal indignation, and he expunged it from the later editions of his book. It certainly was unjuſt to impute it as a crime to doctor Cowell, that he inſerted this citation in his work; but the manner in which it was received is a ſtriking proof of the high eſtimation in which Littleton's Treatiſe was held.

General obſervations on ſir Edward Coke's Commentary.

The reputation of SIR EDWARD COKE's COMMENTARY is not inferior to that of the work which is the ſubject of it. It is objected to it, that it is defective in method. But it ſhould be obſerved, that a want of method was, in ſome reſpects, inſeparable from the nature of the undertaking. During a long life of intenſe and unremitted application to the ſtudy of the laws of England, ſir Edward Coke had treaſured up an immenſity of the moſt valuable common-law learning. This he wiſhed to preſent to the public, and choſe that mode of doing it, in which, without being obliged to dwell on thoſe doctrines of the law which other authors might explain equally well, he might produce that profound and recondite learning which he felt himſelf to poſſeſs above all others. In adopting this plan, he appears to have judged rationally, and conſequently ought not to be cenſured for a circumſtance inſeparable from it.

It muſt be allowed, that the ſtyle of ſir Edward Coke is ſtrongly tinged with the quaintneſs of the times in which he wrote; but it is accurate, expreſſive, and clear. That it is ſometimes difficult to comprehend his meaning, is owing, generally ſpeaking, to the abſtruſeneſs of his ſubject, not to the obſcurity of his language.—It has alſo been objected to him, that the authorities he cites do not in many places come up to the doctrines they are brought to ſupport. There appears to be ſome ground for this obſervation. Yet it ſhould not be forgot, that the uncommon depth of his learning, and acuteneſs of his mind, might enable him to diſcover connections and conſequences which eſcape a common obſerver.

It is ſometimes ſaid, that the peruſal of his Commentary is now become uſeleſs, as many of the doctrines of law which his writings explain are become obſolete; and that every thing uſeful in him may be found more ſyſtematically and agreeably arranged in modern writers. It muſt be acknowledged, that when he treats of thoſe parts of the law which have been altered ſince his time, his Commentary partakes, in a certain degree, of the obſoleteneſs of the ſubjects to which it is applied; but even where this is the caſe, it does not often happen that the doctrines laid down by him do not ſerve to illuſtrate other parts of the law which are ſtill in force. Thus,—there is no doubt but the caſes which now come before the courts of equity, and the principles upon which they are determined, are extremely different in their nature from thoſe which are the ſubject of ſir Edward Coke's reſearches. Yet the great perſonages who have preſided in thoſe courts, have frequently recurred to the doctrines laid down by ſir Edward Coke, to form, explain, and illuſtrate their decrees. Hence, though portions charged upon real eſtates, for the benefit of younger children, were not known in Littleton's time, and not much known in the time of ſir Edward Coke; yet on the points which ariſe reſpecting the veſting and payment of portions, no writings in the law are more frequently or more ſucceſsfully applied to than ſir Edward Coke's Commentary on Littleton's Chapter of Conditions. It may alſo be obſerved, that notwithſtanding the general tenor of the preſent buſineſs of our courts, caſes muſt frequently occur which depend upon the moſt abſtruſe and intricate parts of the ancient law. Thus the caſe of Jacob v. Wheate led to the diſcuſſion of eſcheats and uſes as they ſtood before the ſtatute of Henry VIII. and the caſe of Taylor v. Horde turned on the learning of diſſeiſins.

But the moſt advantageous and, perhaps, the moſt proper point of view in which the merit and ability of ſir Edward Coke's writings can be placed, is by conſidering him as the centre of modern and ancient law.—The modern ſyſtem of law may be ſuppoſed to have taken its riſe at the end of the reign of king Henry VII. and to have aſſumed ſomething of a regular form about the latter end of the reign of king Charles II. The principal features of this alteration are, perhaps, the introduction of recoveries; conveyances to uſes; the teſtamentary diſpoſition by wills; the abolition of military tenures; the ſtatute of frauds and perjuries; the eſtabliſhment of a regular ſyſtem of equitable juriſdiction; the diſcontinuance of real actions; and the mode of trying titles to landed property by ejectment. There is no doubt, but that, during the above period, a material alteration was effected in the juriſprudence of this country: but this alteration has been effected, not ſo much by ſuperſeding, as by giving a new direction to the principles of the old law, and applying them to new ſubjects. Hence a knowledge of ancient legal learning is abſolutely neceſſary to a modern lawyer. Now ſir Edward Coke's Commentary upon Littleton is an immenſe repoſitory of every thing that is moſt intereſting or uſeful in the legal learning of ancient times. Were it not for his writings, we ſhould ſtill have to ſearch for it in the voluminous and chaotic compilation of caſes contained in the Year-books; or in the dry, though valuable Abridgements of Statham, Fitzherbert, Brooke, and Rolle. Every perſon, who has attempted, muſt be ſenſible how very difficult and diſguſting it is, to purſue a regular inveſtigation of any point of law through thoſe works. The writings of ſir Edward Coke have conſiderably abridged, if not entirely taken away, the neceſſity of this labour.

But

But his writings are not only a repoſitory of ancient learning; they alſo contain the outlines of the principal doctrines of modern law and equity. On the one hand, he delineates and explains the ancient ſyſtem of law, as it ſtood at the acceſſion of the Tudor line; on the other, he points out the leading circumſtances of the innovations which then began to take place. He ſhews the different reſtraints which our anceſtors impoſed on the alienation of landed property, the methods by which they were eluded, and the various modifications which property received after the free alienation of it was allowed. He ſhews, how the notorious and public transfer of property by livery of ſeiſin was ſuperſeded, by the ſecret and refined mode of transferring it, introduced in conſequence of the ſtatute of uſes. We may trace in his works the beginning of the diſuſe of real actions; the tendency in the nation to convert the military into ſocage tenures; and the outlines of almoſt every other point of modern juriſprudence. Thus his writings ſtand between, and connect the ancient and modern parts of the law, and by ſhewing their mutual relation and dependency, diſcover the many ways by which they reſolve into, explain, and illuſtrate one another.

Account of the editions of Littleton without the Commentary.

It has not yet been ſettled, and perhaps cannot now be ſettled, with any degree of preciſion, when the firſt EDITION of LITTLETON's work was printed. Sir Edward Coke's miſtakes reſpecting the Rohan edition, are pointed out in the note taken from the 12th edition to that part of his Preface. Doctor Middleton, in his Account of Printing in England, conjectures the edition by J. Lettou and W. Machlinia, to have been printed in 1481, and that it is the firſt edition. This makes the printing of the book to have been within ſix or ſeven years after Caxton's introduction of the art into England, and within twenty-four years after the firſt invention of it. Dr. Middleton's conjecture is ſupported by the concurrent circumſtance of the time when thoſe printers appear to have been in partnerſhip; and no other edition bears evidence of a prior title to antiquity. Another edition of nearly equal pretenſions to precedence with the Lettou and Machlinia edition, has lately appeared from the library of the late William Bayntun, eſq. It has remained hitherto undeſcribed, and was probably unknown to all who have undertaken to notice the ſeveral editions of this work. At the end it is ſaid to be printed by Machlinia alone, then living near Fleet-bridge; from which, and other circumſtances, it is clearly diſtinguiſhable from the former edition. The letter uſed in printing it is leſs rude, and more like the modern Engliſh black letter, than the letter uſed in the joint edition of Lettou and Machlinia, and the abbreviations are much leſs numerous. Theſe circumſtances afford ſome, though but a faint ground to ſuppoſe it poſterior in date to the former. Mr. Hargrave has both theſe editions. In 1766, Monſ. Houard, an Avocat in the Parliament of Normandy, and Conſeiller Echevin of the town of Dieppe, publiſhed at Rouen in two volumes, the text of Littleton, with a French interpretation, notes, a gloſſary, and Pieces Juſtificatives. Many editions of Littleton in French and in Engliſh only have been publiſhed in ſmall octavo, twelves, ſixteens, and twenty-fours. They are all of them very inaccurate. The French edition in 1585 is the firſt in which the ſections are numbered. An edition in French and Engliſh, in double columns, with a table of the principal matters, was printed in duodecimo in 1671. Conſidering the univerſal eſtimation in which Littleton's work is held, and that it generally is the firſt work put into a ſtudent's hand, it is very ſingular, that ſince the editions by Lettou and Machlinia, and the Rohan edition, no correct edition of it without the Commentary has yet been publiſhed. The reader will hear with pleaſure, that Mr. Hargrave has it in contemplation to favour the public with ſuch an edition, and to print it in ſuch a manner as will make it a typographical curioſity.

Editions of Littleton with ſir Edw. Coke's Commentary.

The firſt EDITION of SIR EDWARD COKE's COMMENTARY upon Littleton was publiſhed in his life-time, in 1628: it is very incorrect. The ſecond edition was printed in 1629, and is ſuppoſed to have been reviſed by the author. The ſubſequent editions, to the eighth incluſively, ſeem to have been printed from the ſecond, without much variation. The ninth edition includes ſir Edward Coke's Reading on Fines, and his Treatiſe on Bail and Mainprize. To the tenth edition are added, the Complete Copyholder, with many references. In the eleventh edition the book intitled the Olde Tenures is inſerted. At the end, both of the edition of Littleton by Lettou and Machlinia, and of that by Machlinia only, Littleton's work is called the "Tenores Novelli," to diſtinguiſh it (it is preſumed) from the Treatiſe of Olde Tenures. The eleventh edition has alſo ſeveral notes and additions, tending principally to ſhew the alteration of the law ſince the time of Littleton and his commentator. The twelfth and laſt edition was publiſhed in 1738. Some obſervations upon it may be found in Mr. Hargrave's Addreſs to the Public on his undertaking the preſent edition. An abridgement of ſir Edward Coke's Commentary was publiſhed in 1714, by Mr. Serjeant Hawkins; ſhort but pointed obſervations are occaſionally introduced in it, to explain the principles of the old law, and the alterations made in it by ſubſequent ſtatutes.

Preſent edition.

Mr. Hargrave began the PRESENT EDITION, by publiſhing it in Numbers. Soon after his publication of the Firſt Number, he was favored with lord chief juſtice Hale's manuſcript notes. By an advertiſement prefixed to the Second Number, he informed the public that they were very numerous, as far as the Chapter of Knight Service; that there were few on the ſubſequent parts of the work; that for the communication of them, he was indebted to the liberal ſpirit of a noble lord *, who, he obſerved, had ever diſtinguiſhed

* The preſent Earl of Hardwicke.

himſelf

himſelf as a zealous encourager of undertakings having the leaſt tendency to promote ſcience and learning; that in the original, ſome of the notes were in Latin, but moſt of them in Law-French; and that it was thought moſt convenient to give the latter in a literal Engliſh tranſlation. Upon the publication of the Second Number, Mr. Hargrave received from ſir William Jones an account of ſome few various readings from two Engliſh manuſcripts of Littleton's Tenures. By an advertiſement prefixed to the Third Number he informed the public, that both of theſe manuſcripts were in the public library at Cambridge, being marked Dd 11. 60. and Mm 52.; that the firſt was written on vellum, and was imperfect at the beginning, and in the Chapter of Warranty; and that the ſecond, which ſeemed to be the moſt valuable, was written on paper, and had only one leaf torn, and that its antiquity appeared from the following note in the firſt page:

Iſte liber emptus fuit in cæmeterio Sti. Pauli
London, *27th die* Julii, *anno regis E. 4ti.* 20*mo.* 10s. 6d.

that this date ſhewed that the manuſcript was of Littleton's time, July 20 E. 4. being in 1481, which was the year before Littleton's death; that in referring to the manuſcripts, that in vellum would be diſtinguiſhed by Vell. MS. and that in paper by Paper MS. With theſe aſſiſtances Mr. Hargrave completed that part of the edition which is executed by him. He then relinquiſhed the work, and, by an Advertiſement (which immediately precedes this Preface) he informed the public of it, and of the preſent editor's undertaking to continue the work.

Soon after the publication of this Advertiſement, the preſent editor, through the obliging interference of John Holliday, eſq. of Lincoln's-Inn, with the executors of the will of the late ſir Thomas Parker, was favoured with a copy of the notes of lord chancellor Nottingham and lord Hale upon this work. The following account is given of them in a note in ſir Thomas Parker's own hand-writing:

"The notes to this book, in my hand-writing (except one note in folio 26. b. and ſome "modern caſes), were tranſcribed from a copy of the lord chancellor Nottingham's manuſcript "notes, in the margin of his lord Coke's Commentary upon Littleton, which copy was made "for the uſe of his ſon Heneage Finch, eſq. ſolicitor-general, afterwards earl of Ayleſford, "and is now in the poſſeſſion of the honourable Mr. Legge, to whoſe favour I am indebted for "theſe notes.

"The notes in a different hand-writing were tranſcribed from a copy of lord chief-juſtice "Hale's MSS. notes in the margin of Coke upon Littleton, preſented by lord Hale to the "father of Philip Gybbon, eſq. which copy was made for the uſe of the honourable Charles "Yorke, eſq. his Majeſty's ſolicitor-general. The book in which the notes are in the hand-"writing of lord Hale, is now in the poſſeſſion of Mr. Gybbon; and the book from which "theſe notes were tranſcribed by the favour of Mr. Yorke, is now in his poſſeſſion.

"T. PARKER, 1758."

Under theſe circumſtances the THIRTEENTH EDITION has been completed in its form.

When it became generally known that Mr. Hargrave had relinquiſhed the work, the preſent editor engaged in it; but he did not engage in it while there was the ſlighteſt probability of its being undertaken by any other perſon: and even then, he would not have engaged in it, if by doing ſo he incurred any obligation of completing Mr. Hargrave's undertaking in *all* its parts. He thought, an *imperfect execution* of the remaining part of the work would be more agreeable to the public than *none*; that to preſent them with the remaining part of the text of Littleton and his Commentator, with *ſome* references and *ſome* notes, would be an acceptable offering to them. No other perſon appeared with any, and the preſent editor's performance does not prevent the exertions of any future adventurer.

LINCOLN'S-INN,
Nov. 4, 1787.

CHARLES BUTLER.

DEO,

PATRIÆ,

TIBI,

Proœmium.

The name and degree of our author.

OUR author, a gentleman of an ancient and a fair-deſcended family de Littleton, took his name of a town ſo called, as that famous chief-juſtice ſir John de Markham, and divers of our profeſſion, and others, have done.

His arms.

Thomas de Littleton, lord of Frankley, had iſſue Elizabeth his only child, and did bear the arms of his anceſtors, viz. argent a chevron between three eſcalop-ſhells ſable. The bearing hereof is very ancient and honourable; for the ſenators of Rome did wear bracelets of eſcalop-ſhells about their arms, and the knights of the honourable order of St. Michael in France do wear a collar of gold in the form of eſcalop-ſhells at this day. Hereof much more might be ſaid, but it belongs unto others.

Inſtituted by Lewis the Eleventh, king of France, 9. E. 4. 1469.

Thomas Weſtcote.

With this Elizabeth married Thomas Weſtcote, eſquire, the king's ſervant in court, a gentleman anciently deſcended, who bare argent, a bend between two cotiſſes ſable, a bordure engrayled gules, bezanty.

But ſhe being fair, and of a noble ſpirit, and having large poſſeſſions and inheritance from her anceſtors de Littleton, and from her mother, the daughter and heir of Richard de Quatermains, and other her anceſtors (ready means in time to work her own deſire), reſolved to continue the honour of her name (as did the daughter and heir of Charleton, with one of the ſons of Knightly, and divers others), and therefore prudently, whilſt it was in her own power, provided by Weſtcote's aſſent before marriage, that her iſſue inheritable ſhould be called by the name of de Littleton. Theſe two had iſſue four ſons, Thomas, Nicholas, Edmund, and Guy, and four daughters.

Our author bore his mother's ſurname.

Thomas the eldeſt was our author, who bare his father's chriſtian-name Thomas, and his mother's ſurname de Littleton, and the arms de Littleton alſo; and ſo doth his poſterity bear both name and arms to this day.

Camden.
" The juſt ſhall flou-
" riſh like the palm-
" tree, and ſpread a-
" broad like the cedar
" in Libanus." Pſal. xcii. 12.

Camden, in his Britannia, ſaith thus: Thomas Littleton, alias Weſtcote, the famous lawyer, to whoſe Treatiſe of Tenures the ſtudents of the common law are no leſs beholden, than the civilians to Juſtinian's Inſtitutes.

The dignity of this fair-deſcended family de Littleton hath grown up together and ſpread itſelf abroad by matches, with many other ancient and honourable families, to many worthy and fruitful branches, whoſe poſterity flouriſh at this day, and quartereth many fair coats, and [*] enjoyeth fruitful and opulent inheritances thereby.

[*] The beſt kind of quartering of arms.

He was of the Inner-Temple, and read learnedly upon the ſtatute of *W.* 2. *De donis conditionalibus*, which we have. He was afterward called *ad ſtatum*

et grad' servientis ad legem, and was steward of the court of the Marshalsey of the king's household, and for his worthiness was made by king *H.* 6. his serjeant, and rode justice of assise the Northern Circuit, which places he held under king *E* 4. until he, in the sixth year of his reign, constituted him one of the judges of the court of common pleas, and then rode Northamptonshire Circuit. The same king, in the 15th year of his reign, with the prince, and other nobles and gentlemen of ancient blood, honoured him with the knighthood of the Bath.

King's serjeant, Rot. Pat. 33. H. 6. part 1. m. 16.
Mich. 34. H. 8. fol. 3. a. Judge of the Common Pleas, Rot. Pat. 6. E. 4. part 1. m. 15.

Knight of the Bath, 15. E. 4.

He compiled this book when he was judge, after the fourteenth year of the reign of king *E.* 4. but the certain time we cannot yet attain unto, but (as we conceive) it was not long before his death, because it wanted his last hand; "for that tenant by *elegit*, statute-merchant, and staple, were in the table of "the first printed book, and yet he never wrote of them *".

When he wrote this book.
14. E. 4. tit. Garranty 5.

Litt. Sect. 692. 729 & 740.

Our author, in composing this work, had great furtherance in that he flourished in the time of many famous and expert sages of the law. [*a*] Sir Richard Newton, [*b*] sir John Prisot, [*c*] sir Robert Danby, [*d*] sir Thomas Brian, [*e*] sir Pierce Ardern, [*f*] sir Richard Choke, [*g*] Walter Moyle, [*h*] William Paston, [*i*] Robert Danvers, [*k*] William Ascough, and other justices of the court of common pleas: and of the king's-bench, [*l*] sir John June, [*m*] sir John Hody, [*n*] sir John Fortescue, [*o*] sir John Markham, [*p*]. sir Thomas Billing, and other excellent men flourished in his time.

The deceases of his contemporaries.
[*a*] He died 27. H. 6.
[*b*] He died 39. H. 6.
[*c*] Died 11. E. 4.
[*d*] Died 16. H. 7.
[*e*] Died 7. E. 4.
[*f*] Overlived our author.
[*g*] Survived him also.
[*h*] Died 23. H. 6.
[*i*] Survived our author.
[*k*] Died 33 H. 6.
[*l*] Died 18. H. 6.
[*m*] Died 20. H. 6.
[*n*] Removed 1. E. 4.
[*o*] Removed 8. E. 4.
[*p*] Died 21 E. 4.

And of worldly blessings I account it not the least, that in the beginning of my study of the laws of this realm, the courts of justice, both of equity and of law, were furnished with men of excellent judgment, gravity, and wisdom. As in the chancery, sir Nicholas Bacon, and after him sir Thomas Bromley. In the exchequer-chamber, the lord Burghley, lord high treasurer of England, and sir Walter Mildmay, chancellor of the exchequer. In the king's bench, sir Christopher Wray, and after him sir John Popham. In the common pleas, sir James Dyer, and after him sir Edmund Anderson. In the court of exchequer, sir Edward Saunders, after him sir John Jeffery, and after him sir Roger Manwood, men famous (amongst many others) in their several places, and flourished, and were all honoured and preferred by that thrice noble and virtuous queen Elizabeth of ever blessed memory. Of these reverend judges, and others their associates, I must ingenuously confess, that in her reign I learned many things, which in these Institutes I have published: and of this queen I may say, that as the rose is the queen of flowers, and smelleth more sweetly when it is plucked from the branch, so I may say and justify, that she by just desert was the queen of queens, and of kings also, for religion, piety, magnanimity, and justice; who now by remembrance thereof, since Almighty God gathered her to himself, is of greater honour and renown than when she was living in this world. You cannot question what rose I mean; for take the red or the white, she was not only by royal discent and inherent birth-right, but by rosial beauty also, heir to both.

Queen Elizabeth.

And though we wish by our labours (which are but *cunabula legis*, the cradles of the law) delight and profit to all the students of the law, in their beginning of their study (to whom the First Part of the Institutes is intended), yet principally to my loving friends, the students of the honourable and worthy societies of the Inner-Temple, and Clifford's-Inn, and of Lion's-Inn also, where I was some time reader. And yet of them more particularly to

Inner-Temple.
Clifford's-Inn.
Lion's-Inn.

* That Littleton did intend to write of those tenancies, is plain from the 291st and 324th Sections; but it may be justly questioned whether the fact alledged by my lord Coke, to support his opinion, be true; because in the copy of the Rohan edition, now in Lincoln's Inn Library, and in that at this time in the booksellers custody, the Table mentions nothing concerning these tenancies; nor does it seem probable that there ever was any other Table, both the Copies appearing on the nicest examination to be complete. *Note to 11th edit.* — *See also Note on Sect.* 241. *of the present edit.*

such

ſuch as have been of that famous univerſity of Cambridge, *alma mea mater*. And to my much-honoured and beloved allies and friends of the county of Norfolk, my dear and native country; and to Suffolk, where I paſſed my middle age; and of Buckinghamſhire, where in my old age I live. In which counties, we, out of former collections, compiled theſe Inſtitutes. But now return we again to our author.

His marriage.

He married with Johan, one of the daughters and coheirs of William Burley, of Broomſcroft-caſtle, in the county of Salop, a gentleman of ancient diſcent, and bare the arms of his family, argent, a feſs checkie or and azure, upon a lion rampant ſable, armed gules; and by her had three ſons, ſir William, Richard the lawyer, and Thomas.

His iſſue.

The re-eſtabliſhment of his poſterity, by the matches of his three ſons with virtue and good blood.

In his life-time, he, as a loving father and a wiſe man, provided matches for theſe three ſons, in virtuous and ancient families, that is to ſay, for his ſon ſir William, Ellen, daughter and coheir of Thomas Welſh eſquire, who by her had iſſue Johan his only child, married to ſir John Aſton of Tixal, knight: and for the ſecond wife of ſir William, Mary the daughter of William Whittington eſquire, whoſe poſterity in Worceſterſhire flouriſh to this day. For Richard Littleton his ſecond ſon, to whom he gave good poſſeſſions of inheritance, Alice, daughter and heir of William Winſbury of Pilleton-Hall in the county of Stafford eſquire, whoſe poſterity proſper in Staffordſhire to this day. And for Thomas his third ſon, to whom he gave good poſſeſſions of inheritance, Anne, daughter and heir of John Botreaux eſquire, whoſe poſterity in Shropſhire continue proſperouſly to this day. Thus advanced he his poſterity, and his poſterity, by imitation of his vertues, have honoured him.

He gave poſſeſſions of inheritance to his younger ſons for their better advancement.

His laſt will.

His executors, his ſupervifor.

He made his laſt will and teſtament the 22d day of Auguſt, in the twenty-firſt year of the reign of king Edward the fourth, whereof he made his three ſons, a parſon, a vicar, and a ſervant of his, executors; and conſtituted ſupervifor thereof, his true and faithful friend, John Alcock, doctor of law, of the famous univerſity of Cambridge, then biſhop of Worceſter; a man of ſingular piety, devotion, chaſtity, temperance, and holineſs of life; who amongſt other of his pious and charitable works, founded Jeſus College in Cambridge; a fit and a faſt friend to our honourable and vertuous judge.

His age.
His departure.

He left this life in his great and good age, on the 23d day of the month of Auguſt, in the ſaid twenty-firſt year of the reign of king Edward the fourth: for it is obſerved for a ſpecial bleſſing of Almighty God, that few or none of that profeſſion die *inteſtatus et improles*, without will, and without child; which laſt will was proved the 8th of November following, in the Prerogative Court of Canterbury, for that he had *bona notabilia* in divers dioceſſes. But yet our author liveth ſtill *in ore omnium juriſprudentium*.

1. *H.* 7. fol. 27.
21. *H.* 7. f. 31. 32. b.

Littleton is named in 1. *H.* 7. and 21. *H.* 7. Some do hold, that it is no error either in the reporter or printer; but that it was Richard the ſon of our author, who in thoſe days profeſſed the law, and had read upon the ſtatute of *W.* 2. *quia multi per malitiam*, and * unto whom his father dedicated his book: and this Richard died at Pilleton-Hall in Staffordſhire, in 9. *H.* 8.

W. 2. cap. 11.
[*] See Littleton, Sect. 749.

His ſepulchre.

The body of our author is honourably interred in the cathedral church of Worceſter, under a fair tomb of marble, with his ſtatue or portraiture upon it, together with his own match, and the matches of ſome of his anceſtors, and with a memorial of his principal titles; and out of the mouth of his ſtatue proceedeth this prayer, *Fili Dei miſerere mei*, which he himſelf cauſed to be made and finiſhed in his life-time, and remaineth to this day. His wife Johan, lady Littleton, ſurvived him, and left a great inheritance of her father, and Ellen her mother, daughter and heir of John Clendon eſquire, and other her anceſtors, to ſir William Littleton her ſon.

This

THE PREFACE.

When this work was published.

This work was not published in print, either by our author himself, or Richard his son, or any other, until after the deceases both of our author and of Richard his son. For I find it not cited in any book or report, before sir Anthony Fitzherbert cited him in his *Natura Brevium*; who published that book of his *Natura Brevium* in 26. *H.* 8. Which work of our author, in respect of the excellency thereof, by all probability should have been cited in the reports of the reigns of *E.* 5. *R.* 3. *H.* 7. or *H.* 8. or by St. Jermyn in his book of the Doctor and Student †, which he published in the three and twentieth year of *H.* 8. if in those days our author's book had been printed. And yet you shall observe, that time doth ever give greater authority to works and writings that are of great and profound learning, than at the first they had. The first impression that I find of our author's book was at Roan in France, by William de Tailier (for that it was written in French) *ad instantiam Richardi Pinson*, at the instance of Richard Pinson, the printer of King *H.* 8. before the said book of *Natura Brevium* was published; and therefore upon these and other things that we have seen, we are of opinion, that it was first printed about the four and twentieth year of the reign of king *H.* 8. since which time he had been commonly cited, and (as he deserves) more and more highly esteemed *.

F. N. B. 212. c.

Note.

When this work was first imprinted.

His picture.

He that is desirous to see his picture, may in the churches of Frankley and Hales-Owen, see the grave and reverend countenance of our author, the outward man; but he hath left this book, as a figure of that higher and nobler part, that is, of the excellent and rare endowments of his mind, especially in the profound knowledge of the fundamental laws of this realm. He that diligently reads this his excellent work, shall behold the child and figure of his mind, which the more often he beholds in the visual line, and

The figure of his mind.

* This opinion of my lord Coke's, concerning the time of the first impression of Littleton's Tenures, although it hath been followed by sir William Dugdale, in his *Origines Juridiciales*, and by bishop Nicholson, in his Historical Library, is certainly erroneous; for it appears by two copies now in the bookseller's custody, that they were printed twice at London in the year 1528, once by Richard Pinson, and again by Robert Redmayne; and that was the nineteenth year of the reign of *H.* 8. To determine certainly when the Rohan edition was published, is almost impossible; and before any conjectures can be offered on that subject, 'twill be necessary to consider how conclusive the arguments his lordship draws from our author's not being cited as authority in the books he mentions may be: it either proves what his lordship uses it for, or else that Littleton's authority was not then so well established as 'tis now (for which he gives us here a very good reason): and that this last is true, the aforesaid editions do sufficiently evince, for their titles and conclusions run thus: "Littleton's Tenures, newly and most truly cor-"rected." And in the end, *Expliciunt tenores Littletoni cum alterationibus eorundem et additionibus novis, necnon cum aliis non minus utilioribus:* Nay, these very additions are incorporated into the book itself, nor are they distinguish'd by any mark from the Original. The weakness of this argument will further appear, if it should be applied to the discovering the time my lord Coke's Commentary on Littleton was first published, for this was not cited as authority for some time after its publication. The old editions abovementioned, Pynson's and Le Talleur's name, and the manner Littleton is printed in at Rohan, seem to be the only means of discovering what we seek. From those editions we may collect, not only that the Rohan impression is older than the year 1528, but also by what occurs in the beginning and end of them, that there had been other impressions of our author. From Pynson's name at the end of the Rohan edition, it may be concluded that he would not have engaged his friend William Le Talleur to have printed Littleton at Rohan, had he ever before printed any books in French; and that he printed an Abridgment of the Statutes, part of which is in French, in the year 1499, appears by one of those books now in the same person's custody. Statham's Abridgment has his name to it, but there is no date, yet it being printed with the same types, and in the same manner, Littleton was at Rohan, and as it is a larger book, it is highly probable 'twas printed some time after the publication of Littleton's Tenures, and that Pynson's success in the lesser undertaking induced him to venture on the greater; which in those days was the work of two or three years. William Le Talleur printed a Chronicle of the Dutchy of Normandy, as appears by his name and cypher at the end thereof, and the date in the beginning in the year 1487. The book itself is printed without any title-page, initial letter of the chapters, number of the leaves or year, and in a character much resembling writing, and with such abbreviations as are used in manuscripts: all which 'tis well known to those who have seen many old books, are undoubted proofs of a book's being printed when that art was in its infancy. Upon the whole it may certainly be concluded, that the book was printed some years before 1487; because the abovementioned Chronicle, which hath not such marks of antiquity, was printed in that year; and from what has been observed concerning the manner 'tis printed in, it will be thought by those who are versed in ancient books, to have been published ten years before that time. *Note to the 11th Edition.*

† This book appears to have been first published by J. Rastell, 1529. Ames.

well

well obſerves him, the more ſhall he juſtly admire the judgment of our author, and increaſe his own. This only is deſired, that he had written of other parts of law, and eſpecially of the rules of good pleading, (the heart-ſtring of the common law) wherein he excelled: for of him might the ſaying of our Engliſh poet be verified:

Thereto he could indite and maken a thing; Chaucer.
There was no wight could pinch at his writing:

So far from exception, as none could pinch at it. This ſkill of good pleading, he highly in this work commended to his ſon, and under his name to all other ſtudents ſons of his law. He was learned alſo in that art, which is ſo neceſſary to a compleat lawyer; I mean of logick, as you ſhall perceive by reading of theſe Inſtitutes, wherein are obſerved his ſyllogiſms, inductions, and other arguments; and his definitions, deſcriptions, diviſions, etymologies, derivations, ſignifications, and the like. Certain it is, that when a great learned man (who is long in making) dieth, much learning dieth with him. Seneca.

Good pleading.

Logick.

That which we have formerly written, that this book is the ornament of the common law, and the moſt perfect and abſolute work that ever was written in any humane ſcience; and in another place, that which I affirmed and took upon me to maintain againſt all oppoſites whatſoever, that it is a work of as abſolute perfection in its kind, and as free from error, as any book that I have known to be written of any humane learning, ſhall to the diligent and obſerving reader of theſe Inſtitutes be made manifeſt, and we by them (which is but a Commentary upon him) be deemed to have fully ſatisfied that, which we in former times have ſo confidently affirmed and aſſumed. His greateſt commendation, becauſe it is of greateſt profit to us, is, that by this excellent work, which he had ſtudiouſly learned of others, he faithfully taught all the profeſſors of the law in ſucceeding ages. The victory is not great to overthrow his oppoſites, for there never was any learned man in the law, that underſtood our author, but concurred with me in his commendation: *Habet enim juſtam venerationem quicquid excellit*; for whatſoever excelleth hath juſt honour due to it. Such as in words have endeavoured to offer him diſgrace, never underſtood him, and therefore we leave them in their ignorance, and wiſh that by theſe our labours they may know the truth and be converted. But herein we will proceed no further, for, *Stultum eſt abſurdas opiniones accuratius refellere.* It is meer folly to confute abſurd opinions with too much curioſity.

The commendation of his work.

Cicero.

Ariſtotle.

And albeit our author in his Three Books cites not many authorities, yet he holdeth no opinion in any of them, but is proved and approved by theſe two faithful witneſſes in matter of law, authority and reaſon. Certain it is, when he raiſeth any queſtion, and ſheweth the reaſon on both ſides, the latter opinion is his own, and is conſonant to law. We have known many of his caſes drawn in queſtion, but never could find any judgment given againſt any of them, which we cannot affirm of any other book or edition of our law. In the reign of our late ſovereign lord king James of famous and ever bleſſed memory, it came in queſtion upon a demurrer in law, Whether the releaſe to one treſpaſſer ſhould be available or no to his companion? Sir Henry Hobart, that honourable judge and great ſage of the law, and thoſe reverend and learned judges, Warburton, Winch, and Nichols, his companions, gave judgment according to the opinion of our author, and openly ſaid, that they owed ſo great reverence to Littleton, as they would not have his caſe diſputed or queſtioned: and the like you may find in this Part of the Inſtitutes. Thus much (though not ſo much as his due) have we ſpoken of him; both to ſet out his life, becauſe he is our author, and for the imitation of him by others of our profeſſion.

Note.

Mich. 3. Jac. in communi banc. inter Cock & Ilnours.

THE PREFACE.

What is endeavoured by these Institutes.

We have in these Institutes endeavoured to open the true sense of every of his particular cases, and the extent of every of the same, either in express words, or by implication; and where any of them are altered by any latter act of parliament to observe the same, and wherein the alteration consisteth. Certain it is, that there is never a period, nor (for the most part) a word, nor an *&c.* but affordeth excellent matter of learning. But the module of a preface cannot express the observations that are made in this work, of the deep judgment and notable invention of our author. We have by comparison of the late and modern impressions with the original print, vindicated our author from two injuries: First, from divers corruptions in the late and modern prints, and restored our author to his own: Secondly, from all additions and encroachments upon him, that nothing might appear in his work but his own *.

The benefit of these Institutes.

Our hope is, that the young student, who heretofore meeting at the first, and wrestling with as difficult terms and matter, as in many years after, was at the first discouraged as many have been, may, by reading these Institutes, have the difficulty and darkness both of the matter, and of the terms and words of art in the beginning of his study, facilitated and explained unto him, to the end he may proceed in his study chearfully and with delight; and therefore I have termed them Institutes, because my desire is, they should institute and instruct the studious, and guide him in a ready way to the knowledge of the national laws of England.

Wherefore called Institutes.

Wherefore published in English.

This Part we have (and not without precedent) published in English, for that they are an introduction to the knowledge of the national law of the realm; a work necessary, and yet heretofore not undertaken by any, albeit in all other professions there are the like. We have left our author to speak his own language, and have translated him into English, to the end that any of the nobility or gentry of this realm, or of any other estate or profession whatsoever, that will be pleased to read him and these Institutes, may understand the language wherein they are written.

Regula,

I cannot conjecture that the general communicating of these laws in the English tongue can work any inconvenience, but introduce great profit, seeing that *Ignorantia juris non excusat*, Ignorance of the law excuseth not. And herein I am justified by the wisdom of a parliament; the words whereof be, "That the laws and customs of this realm the rather should be reasonably perceived and known, and better understood by the tongue used

36. E. 3. cap. 5.

"in this realm, and by so much every man might the better govern himself "without offending of the law, and the better keep, save and defend his "heritage and possessions. And in divers regions and countries, where the "king, the nobles, and other of the said realm have been, good governance "and full right is done to every man, because that the laws and customs be "learned and used in the tongue of the country:" as more at large by the said act, and the purview thereof may appear: *Et neminem oportet esse sapientorem legibus*, No man ought to be wiser than the law.

Regula,

Our author's kind of French.

And true it is that our books of reports and statutes in ancient times were written in such French as in those times was commonly spoken and written by the French themselves. But this kind of French that our author hath used, is most commonly written and read, and very rarely spoken, and therefore cannot be either pure, or well pronounced. Yet the change thereof (having been so long customed) should be without any profit, but not without great danger and difficulty: for so many ancient terms and words drawn from that legal French, are grown to be *vocabula artis*, vocables of art, so apt and significant to express the true sense of the laws, and are so woven in the laws themselves, as it is in a manner impossible to change them, neither ought legal terms to be changed.

* See the additions to this new edition, No. 74 and 81. *Note to the 11th edit.*

In

THE PREFACE.

In ſchool divinity, and amongſt the gloſſographers and interpreters of the civil and canon laws, in logick, and in other liberal ſciences, you ſhall meet with a whole army of words, which cannot defend themſelves *in bello grammaticali*, in the grammatical war, and yet are more ſignificant, compendious, and effectual to expreſs the true ſenſe of the matter, than if they were expreſſed in pure Latin. 36. E. 3. ub. ſupra.

This work we have called "The Firſt Part of the Inſtitutes," for two cauſes: Firſt, for that our author is the firſt book that our ſtudent taketh in hand: Secondly, for that there are ſome other Parts of Inſtitutes not yet publiſhed, (viz.) The Second Part, being a Commentary upon the ſtatute of *Magna Charta*, Weſtm. 1. and other old ſtatutes. The Third Part treateth of criminal cauſes and pleas of the crown: which Three Parts we have, by the goodneſs of Almighty God, already finiſhed. The Fourth Part we have purpoſed to be of the juriſdiction of courts: but hereof we have only collected ſome materials towards the raiſing of ſo great and honourable a building. We have by the goodneſs and aſſiſtance of Almighty God, brought this twelfth work to an end: in the eleven books of our Reports we have related the opinions and judgments of others; but herein we have ſet down our own. Wherefore called the Firſt Part.

Before I entered into any of theſe Parts of our Inſtitutes, I acknowledging mine own weakneſs and want of judgment to undertake ſo great works, directed my humble ſuit and prayer to the Author of all goodneſs and wiſdom, out of the Book of Wiſdom; *Pater & Deus miſericordiæ, da mihi ſedium tuarum aſſiſtricem ſapientiam, mitte eam de Cœlis ſanctis tuis & a ſede magnitudinis tuæ, ut mecum ſit & mecum laboret, ut ſciam quid acceptum ſit apud te!* "Oh Father "and God of mercy, give me Wiſdom, the aſſiſtant of thy ſeats! Oh ſend "her out of the holy heavens, and from the ſeat of thy greatneſs, that ſhe "may be preſent with me, and labour with me, that I may know what is pleaſing unto thee." *Amen.* Lib. Sap. cap. ix. verſ. 4. 10.

Our author hath divided his whole work into Three Books. In his Firſt he hath divided eſtates in lands and tenements, in this manner: for *res per diviſionem melius aperiuntur.* Bracton.

A Figure of the Diviſion of Poſſeſſions.

- Eſtates.
  - By the common law
    - Into the ſtate of freehold
      - For term of life.
        - For term of life of the tenant.
          - Tenant in tail after poſſibility of iſſue extinct.
          - Tenant by the curteſy.
          - Tenant in dower,
            1. By the common law.
            2. By the cuſtom.
            3. *Ad oſtium eccleſiæ.*
            4. *Ex aſſenſu patris.*
            5. *De la pluis beale.*
        - For term of life of another.
      - Inheritance
        - Fee-ſimple.
        - Fee-tail.
          - General.
          - Special.
    - Under the ſtate of freehold.
      - Tenant for years, or half a year, &c.
      - Tenant at will,
        - Expreſſed.
        - Implied.
  - By cuſtom, theſe may be ſo divided as eſtates have been by the common law.

Our author dealt only with the eſtates and terms aboveſaid: ſomewhat we ſhall ſpeak of eſtates by force of certain ſtatutes, as of ſtatute-merchant, ſtatute-ſtaple, and *elegit*, (whereof our author intended to have written) [*] and likewiſe to executors to whom lands are deviſed for payment of debts, and the like.

[*] See the firſt remark to the Preface.

Regula.
Incivile eſt parte una perſpecta, tota re non cognita, de ea judicare.

I ſhall deſire, that the learned reader will not conceive any opinion againſt any part of this painful and large volume, until he ſhall have adviſedly read over the whole, and diligently ſearched out, and well conſidered of the ſeveral authorities, proofs and reaſons which we have cited and ſet down for warrant and confirmation of our opinions throughout this whole work.

Mine advice to the ſtudent is, that before he read any part of our Commentaries upon any Section, that firſt he read again and again our author himſelf in that Section, and do his beſt endeavours, firſt of himſelf, and then by conference with others, (which is the life of ſtudy) to underſtand it, and then to read our Commentary thereupon, and no more at any one time than he is able with a delight to bear away, and after to meditate thereon, which is the life of reading. But of this argument we have for the better direction of our ſtudent in his ſtudy, ſpoken in our Epiſtle to our Firſt Book of Reports.

And albeit the reader ſhall not at any one day (do what he can) reach to the meaning of our author, or of our Commentaries, yet let him no way diſcourage himſelf, but proceed; for on ſome other day, in ſome other place, that doubt will be cleared. Our labours herein are drawn out to this great volume, for that our author is twice repeated, once in French, and again in Engliſh.

ANALYSIS

of

LITTLETON.

FEBRUARY 21, 1658-9.

Synopsis totius Littleton *Analyticè.*

- *Littleton's* TENURES may be divided into two parts, *scilicet*,
  - Titles of
    - Land of freehold
      - Estates of
        - Inheritance
          - By the common law, as Fee Simple — Book I. Chap. 1.
          - By statute, as
            - Fee Taile — 2.
            - Fee Taile after possibility of issue extinct — 3.
        - Freehold by
          - The act of law: tenant
            - By the Curtesy — 4.
            - In Dower — 5.
          - Agreement between party and party; as Tenant for Life — 6.
      - Certaine qualifications of estates by
        - Reason of mixture with other possessions, *scil.* by
          - 1 Descent, Parcenary, Book III. Ch. 1, 2.
          - 2 Purchase, Jointenancy — 3.
          - 3 Both, Tenancy in Common — 4.
        - other accidents tending to
          - Ratifying of estates by the act of
            - Law itself
            - Parties
              - Intituled by right,
                - by strengthens the estate already established, as
                  - Remitter 12.
                  - Warranty 13.
                - by adding a surer and better title thereunto, as
                  - Release 8.
                  - Confirmation 9.
              - Interested in the possession, as Attornement 10.
          - The destruction of estates by
            - Discontinuances of a right — 11.
            - Continuance of a wrong; the
              - manner how by descent 6.
              - means how to prevent it by continual claim — 7.
          - Either, according to the performances or non performances thereof, as Conditions — 5.
    - Chattell,
      - Reall.
        - Certain, Tenant for years — I. 7.
      - Personall.
        - Uncertain, Tenant at will — 8, 9, 10.
  - Tenures, *scil.* the services which are as it were the bond betwixt the lord and tenant whereby lands are held to
    - The King only, as
      - Grand Serjeanty — II. 8.
      - Petit Serjeanty — 9.
    - Other lords also of these tenements, which are
      - Spiritual, Frankalmoigne — 6.
      - Temporal, to be performed by their
        - Bodies
          - Homage
            - not continued in the line — 1.
            - continued in the line of the lord and tenant, called Homage Auncestrell 7.
          - Fealty — 2.
        - Goods
          - generally throughout the realm
            - Socage — 5.
            - Rents — 12.
          - particularly in private places, Burgage — 10.
        - Both these tenants bring
          - Fees
            - Escuage — 3.
            - Knights Service — 4.
          - Bond Villenage — 11

*

Fee Simple. Lib. 1. Cap. 1.

- **Fee simple; in which note**
  - **The nature of this estate in respect of**
    - **The name.**
      - The reason of the denomination, *feodum simplex, hæreditas legitima*, §. 1.
      - The usual appellation thereof by this word fee without addition, 293.
    - **The quality of the estate.** It is the greatest a man can have, 11.
  - **The kinds thereof. Fee simple**
    - **Absolute, obtained by**
      - 1 **Purchase; where note**
        - The first obtaining thereof
          - The means how by one's own act, 12.
          - The words of force, *scil.* his heires, 1.
        - The continuing of it, being gotten by inheritance; in which note
          - The generall rules thereof
            - 1 The next heir collaterall of the whole blood shall inherit, §. 2.
            - 2 None of the half blood as heir; and therefore the uncle or sister of the whole blood, if the brother had possession, shall be preferred before the brother of the half blood, 6, 7, 8.
          - The degrees thereof between
            - Brethren. The eldest, 5.
            - Others.
              - 1 Lands may lineally descend, but not ascend in the right line, as to father or other ancestor, but shall rather escheate to the lord, 3.
              - 2 The heir of the part of the father shall first inherit, and then on the part of the mother, 4.
      - 2 Descent, the inheritance whereof goeth as before of lands purchased, but that it shall always continue in the line of the ancestor from whom it did come; and for default of such issue shall escheat to the lord, 4.
      - 3 Suits; where observe the manner of pleading, that he was seised
        - of things in manuall possession, occupation, or receipt, in his own demesne as of fee.
        - of other things. s of fee, 10.
    - Determinable upon contingency; as if a man have lands to him and his heir as long as Paul's standeth; but it is not so of chattells, for they go always to the executors, 740.

Fee Taile. Lib. 1. Cap. 2.

- **Fee taile; in which note**
  - **The quality of this estate in**
    - **The reason of the name,** *scil.* it is called fee taile, because entailed. 1. Limited how long it shall continue; for if the issue in taile faile, the donor or his heirs may enter as in their reversion, 18, 19.
    - **The incidents necessary to this estate.**
      - Their tenure, *scil.* the donees hold of the donors by such services as they hold of the lord paramount; but donees in frankmarriage hold by fealty only, untill the fourth degree be past, 19, 20. 138.
      - The conveyance to this estate, *scil.* by heirs entailed only,
  - **The divers sorts thereof; for some are**
    - **By express words of the stat. of West. 2. c. 1. §. 13. and these are**
      - General, When lands are given to a man or woman and the heirs of his or their body, 14, 15.
        - For if there be no certain body limited, it is fee simple, 31.
      - Speciall,
        - Expresly, when the body of the baron and feme is limited, 16.
        - Inclusively, when lands are given in frankmarriage, 17. And this estate was at common law, 271.
    - **By the equity of the statute,**
      - With a distinction to the sex; as to
        - Males only, 21. 23, 24, 25.
        - Females only, 22.
      - For the will of the donor is to be observed, 22.
      - Without; as
        - When lands are given to baron and feme and the heirs of the body of the baron, the feme hath an estate for life, and the baron in taile generall, 26; but if it were given to baron and feme and the heirs of the baron which he shall beget of the body of the feme, he hath taile special, and she an estate for life, 27.
        - When to a man and to the heirs which he shall engender on the body of his wife, he hath taile special, and she nothing, 29. 33. 53.
        - When a man hath issue a son and dieth, and lands are given to the son and to the heirs of the father's body begotten, 30. and many such there be by equity of the statute, 30.

Tenant in Taile after Poſſibility of Iſſue extinct. Lib. 1. Cap. 3.

Is when lands are given in ſpecial taile, and one of the donors or the man or woman of whoſe body the iſſue in taile is limited to proceed dieth, there being no iſſue in taile in life, then the ſurviving donee is thus called, becauſe there is no poſſibility left of having iſſue inheritable to the land, §. 32, 33, 34.

Tenant by the Curteſy of England. Lib. 1. Cap. 4.

Is when one taketh a feme inheritrix to wife, in whoſe right he was ſeiſed of lands, and by whom he hath or hath had iſſue born alive, which by poſſibility might inherit thoſe lands after her death, for he is tenant by the curteſy of England, §. 35.
The reaſon of the denomination, *ſcil.* becauſe uſed in no other country but in England, 35.

Dower. Lib. 1. Cap. 5.

- By the operation of the law.
  - Common; where note
    - Of what lands a woman ſhall be endowed, *ſcil.* of the third part of all ſuch which her huſband had during the coverture, if he held them not jointly with others, 45. and if ſhe were at the death of her huſband of the age of nine years, 36. *Sed quære*, if this be neceſſary to the endowment *ad oſtium eccleſiæ et ex aſſenſu patris*, 42. If any iſſue which is or by poſſibility might have been begotten on her body, might by poſſibility have been heir, 36. 53. he ſhall be tenant by curteſy, if the iſſue might have been her heir, 52.
    - In what manner to hold:
      - In ſeveralty, if the lands were not held in common, 36. 44.
      - By aſſignment, if it were not certain which ſhe ſhould have, 43.
  - Cuſtomary; where according to the cuſtom ſhe may be endowed of the whole, and ſometimes of a moiety, 37.

There are five kinds of dower, §. 51. whereof ſome are created

- By the act of parties, by matter
  - In ſuit, which is of two ſorts, 38.
    - *Ad oſtium eccleſiæ*, when one ſeiſed of lands in fee (for tenant in taile cannot thus endow his wife, but that the iſſue in taile or donor may defeat it, 46.) and being of full age, (otherwiſe the heir of the huſband may put her out, 47.) endoweth his wife at the church-door of a certain part of his land, 39.
    - *Ex aſſenſu patris* is as the former, but that this is in the life of the father, the ſon being heir apparent, 42. in which caſe it is thought ſhe had need of the deed of the father proving his aſſent to it, 40.

    These two a woman may refuſe, if ſhe never accepted them, and take her dower at the common law, 41.
  - Of record. This is dower *de la pluis beale*, where the feme, at the praying of gardein in chivalry in court of record, doth endow herſelf in the preſence of her neighbours of the beſt part of the land ſhe holdeth as gardein in ſocage, in recompence of her dower of theſe lands which the lord hath as gardein in chivalry; and this is for ſaving the eſtate during the minority of the heir, 48, 49, 50.

Tenant for Term of Life. Lib. 1. Cap. 6.

Note the
- Kinds of this eſtate, *ſcil.*
  - Of the leſſee's own life: this is properly called leſſee for life.
  - Of another man's life; and this is properly called leſſee for another man's life, 56.
- Quality thereof, in conſideration
  - Of the goodneſs of this eſtate, *ſcil.* it is in freehold, but yet in the loweſt degree thereof.
  - Of the uſual name in paſſing thereof from the one to the other. As in feoffments in fee they are called feoffor and feoffee, and in gifts donor and donee; ſo here he that granteth the eſtate is called leſſor, and he to whom it is granted leſſee, 57.

Tenant for Years. Lib. 1. Cap. 7.

Name of this eſtate, viz. — When one leaſeth lands to another for a term of years, the leſſee is thus called, 58.
So if the leaſe be but for half a year, or a quarter, for there is no other terms to term him, 67.

Note the — Nature of it, — How it paſſeth from the leſſor to the leſſee.

By what circumſtances.

1. The leſſee may enter when he will by force of his leaſe, by or without deed; and livery is not neceſſary, unleſs where freehold paſſeth in poſſeſſion or remainder [then it is], 59, 60.
   Unleſs it be in exchanges, where if the lands be in one county it is good by parol, 62, 63.
   Note in exchanges,
   - That the eſtate of the exchanges muſt be equal [not the value], 64, 65.
   - That in both their deeds mention muſt be made of the exchange, 65.
2. How many liveries there needs [when neceſſary], *ſcil.* but one in every county, if it be made in the name of all in the ſame county, 61.

At what time it taketh effect, *ſcil.* at the time prefixed, although the leſſor die before the day; and yet the death of the feoffor is a countermand of a letter of attorney to deliver ſeiſin, 66.

What inconveniencies this eſtate is tied unto.

1. To pay the rent reſerved, elſe may the leſſor diſtrain or bring an action of debt; but if the leſſor were not ſeiſed at the time of the leaſe, the leſſor may plead in barre, if it be not by indenture, 58.
2. He muſt amove his houſehold ſtuff, and come before his leaſe expire, or elſe after the leſſor may take them, 68.
3. The leſſee for years is bound to repair the houſe, 71.
4. Liable to a writ of waſt if he commit any, 67.

Tenant at Will. Lib. 1. Cap. 8.

Note the — Divers ſorts of this eſtate; for it is created either

Expreſsly; as when one letteth lands to hold at his will; and it is called ſo, becauſe there is no certainty of the eſtate but only at will, 68. If therefore it be granted to the leſſee and his heirs at will, this word (heirs) is void, 82. Yet if the leſſor determine his will, the leſſee ſhall have convenient time to carry away his corn and houſehold ſtuff, as well as executors for the goods of their teſtator, 68, 69.
By implication; as when one having a deed of feoffment made unto him, and entereth before livery, 70.

Neceſſary appendances to this eſtate. For

The ſervices reſerved,
- They ſhall not do fealty, 84.
- They muſt pay the rent reſerved, elſe may the leſſor diſtrain or bring an action of debt, 72.

The things he is not bound to, reparations, yet is puniſhable for voluntary waſt, as well as a bailee for goods lent him, 71.

Tenant at Will according to Cuſtom. Lib. 1. Cap. 9, 10.

- Note the
  - Diverſity of this eſtate; for it is by
    - Copy of court roll, 73. and ſo called, becauſe the tenants have no other evidence but of their lord's court roll, 75. And it is when one holdeth land at the will of the lord; and although they have inheritance, yet if the lord ouſt them they have no remedy, but by petition, 77. according to the cuſtom of the manor, 73.
    - The verge; which differeth from the former only in the uſe of the white rod in their ſurrenders, 78.
  - Condition of it; in regard of
    - The quality of it is a baſe tenure, for they have no freehold by courſe of common law, 81; although by cuſtom they may have eſtates of inheritance, 81, 82.
    - The circumſtance
      - In paſſing it from a man, which is by ſurrender; for if he alien by deed, it is a forfeiture, 74. And this
        - Surrender is
          - Into the hands of the lord, to the uſe of him who ſhould have it by ſome cuſtom, 78.
          - Into the hands of the bailiff or iſſue, or of two honeſt men of the ſame lordſhip, and they to preſent it at the next court, 79. And generally all ſuch cuſtoms not repugnant to reaſon are allowable, 80.
        - In continuing of it being paſſed by
          - Sink, which muſt be by plaint in their lord's court, 76.
          - Suſtentation of their houſes by reparation, 83.
          - Service, *ſcil.* ſuch a tenant muſt do fealty, 84. 132.

Homage. Lib. 2. Cap. 1.

- Homage.
  - The nature of this ſervice; *ſcil.* it is the moſt honourable a tenant can do to his lord, 85.
  - The performance of it; where note
    - The perſons which ſhould
      - Make it. They muſt have a greater eſtate than for life; for no tenant for life can take or do homage; therefore one entitled to be tenant *per* curteſy during the life of his wife ſhall do homage; after her death not, 90.
      - Take it; none but the lord himſelf, 92.
    - The ſervice itſelf.
      - The manner how it muſt be done, viz. the tenant be bare-headed, kneel on both knees, and hold both his hands between the hands of his lord, and ſhall ſay, if he hold
        - Of him only, "I become your man," &c. unleſs he be a man of religion, or feme ſole, and they ſhall leave out theſe words, 85, 86, 87.
        - Of more lords, he ſhall ſay in the end, "ſaving my faith which I owe unto my ſovereign lord the king and other lords," &c. 89.
      - The times how often it ſhall be done, viz.
        - One tender, if the lord refuſe, excuſeth the tenant of being diſtrained for it, until his lord demand it again, and it be denied, 150, 151.
        - Once doing of it excuſeth him for his life againſt any that comes in by deſcent; but not againſt him that recovers by any title, 148, 149.

Fealtie. Lib. 2. Cap. 2.

- Fealtie.
  - What manner of ſervice this is.
    - Fealtie, in Engliſh, is as much as *fidelitas* in Latin, 91.
    - It is incident to all tenures but frankalmoigne, 131.
  - How long it is to be performed; where note
    - The perſons which ſhould
      - Make it; *ſcil.* for life or years, but not tenant at will, 93. 132.
      - Take it; the ſteward or bailiff of the lord's court, 92.
    - The forms of it, 88. 91. 94.

* *

Eſcuage. Lib. 2. Cap. 3.

- Eſcuage.
  - The nature of this ſervice in regard of
    - The nature thereof; The nature of the name eſcuage, in Latin *ſcutagium, ſervitium ſcu i*, 95.
    - The performance thereof.
      - How it ought to be performed, viz. he that holdeth this when the king makes a voyage royal out of the realme muſt go with him, and ſo continue after the rate of forty days, for a knight's fee; but how theſe forty days ſhall be accounted, *quære*, 95, 96.
      - If not performed,
        - How tried viz. by certificate to the juſtice under the ſeal of the marſhal of the king's hoſt, 102.
        - How puniſhed, viz. it hath been uſed to be aſſeſſed by parliaments how much king's tenants ſhould pay after the quantity of the tenure; and there the mean lords ſhall either levy their duties by diſtreſs, or by a writ *de ſcutagio habendo*, 97. 100, 101.
  - The ſeveral kinds thereof; for it is either
    - Uncertain, as before; or if the tenants have a cuſtom to pay half; or if it be uncertain, and this kind is not ended in taking of eſcuage generally, which draweth to it homage, and homage draweth to it fealty, 98, 99.
    - Certain; as to pay 6s. 8d. at all times, this is but focage in effect, 98. 120.

Knights Service. Lib. 2. Cap. 4.

- Knights ſervice.
  - The kinds thereof.
    - Tenure by
      - Homage, fealty, eſcuage, is knights ſervice, 103. Caſtle-gard, 111. 121.
      - Cornage of a common perſon, 156.
  - Wardſhip; where note the perſons
    - Of the heir,
      - When he ſhall be in ward, viz. during his nonage, after the death of any anceſtor from whom he claimed his deſcent, and ſhall not be in ward for his body during the life of his father, 114.
      - When out of ward at full age, *fol.*
        - Of an heir male at the age of 21 years, which is full age of male and female, except he enters into religion during his minority, 104. 203 259.
        - Of an heir female,
          - By the common law at 14 years, which is the age of diſcretion, 103.
          - By the ſtat. Weſtm. 1 ch. 22. at 16, if the heir were under 14, and unmarried at the death of her anceſtor, 103.
    - Of the gardian; which is gardein —
      - *En droit*, by reaſon of the tenure, as before, 116.
      - *En fait*, where the other grants the ward over, 116.
  - The incidents thereunto. It draweth
    - Marriage; where note
      - How the lord ſhall take benefit of the marriage.
        - How often, *fol.* but once; and thereupon if the lord marry his ward within the age of 14 years, and he then diſagreeth, as he may, or that his wife die during his minority, he ſhall not be in ward again to him for his body, 104, 105, 106.
        - In what manner, viz without diſparagement.
          - When the heir ſhall be ſaid to be married to his diſparagement, 108. Of the kinds thereof, *quære*, 109. But generally it cannot be if the ward be above the age of 14 years at the time of his marriage, 107.
          - What penalty if the gardian thus marry him.
            - The friends of the ward may enter upon the gardian, 108. In their default it ſeems the ward himſelf may, 108.
      - What remedy, if the ward refuſe to marry upon a lawful tender.
        - If he continue unmarried, he ſhall forfeit the ſingle value of his marriage to his lord, 110.
        - If he marry himſelf during his minority, the double value, 110.
    - Relief of the heir, if he be at full age at the death of his anceſtor, which is after the rate of 100 ſol. for a whole knights fee, 113, 113.

Socage. Lib. 2. Cap. 5.

- **Socage.**
  - The tenure itſelf; where note
    - The denomination *ſocagium*, or *ſervitia ſocæ*; the name whereof remaineth, although for the moſt part the manner of the ſervice by mutual conſent be altered into an annual rent, 119.
    - The divers ſorts thereof.
      - Where one holdeth lands by certain ſervice for all manner of ſervices, as homage and rent, or homage and fealty, or homage, fealty, and rent, 117.
      - By fealty only, if the lord refuſe no other ſervice, 118. 130, 131.
      - By eſcuage certain, 120. to pay a ſum certain for guarding a caſtle, 121. and generally, by any ſervice which is not knights ſervice, 118.
  - The incidents appertaining
    - To the lord of whom the lands are holden, relief after the death of ſuch a tenant: where note
      - How much muſt be paid for relief, *ſcil.* the value of a whole year's rent to the lord, 126. 128.
      - When to be paid, *ſcil.* immediately, or elſe the lord may diſtrain for it, unleſs the ſervices be of that quality that they cannot be gotten but at ſome certain time of the year, 127. 129.
    - To the gardian in ſocage.
      - Ward: for if ſuch tenant die, his heirs within the age of 14 years, his *prochein amy*, to whom the inheritance cannot come, ſhall always have ſuch heir in ward until he be 14 years of age; but he muſt account for the profit, the reaſonable expences deducted, and ſo muſt any other that taketh upon him as gardian; but account will not lie againſt executors but for the profits after the age of 14 years. *Quære*, whether it ſhall be brought againſt him for profits after 14 as gardian or bailiff, 123, 124, 125.
      - Marriage doth not of right belong to the gardian; but if he do marry his ward, he muſt account for it, 123.

Frankalmoigne. Lib. 2. Cap. 6.

- **Frankalmoigne.**
  - The commencement of this tenure.
    - To whom lands may be ſo given to be holden, *ſcil.* to a man of the holy church, or to be a ſpecial corporation, 133, 134.
    - By whom. By the king only, unleſs it be by preſcription, or elſe before the ſtatute of *quia emptores terrarum*, *an.* 18. *Ed.* 140.
  - The continuance thereof.
    - How long, *ſcil.* ſo long as the privity continueth; for if
      - The tenancy to be alienated by tenant in frankalmoigne, or that the reverſion cometh to another than the donor and his heirs, this tenure is determined, 139. 141.
    - In what manner; where note
      - What ſervice the tenant muſt do, *ſcil.* no terrene ſervice, or other ſervice certain, for then he is called tenant by divine ſervice, 137; but in conſcience he ought to make prayers for, &c. but is not compellable otherwiſe than by complaint to the ordinary viſitor, 135, 136. 138.
      - What advantage this tenure hath, *ſcil.* it draweth to it acquittal, 142.

Homage Auncеſtrell. Lib. 2. Cap. 7.

- **Homage Anceſtrell.**
  - When it ſhall be called homage auncеſtrell, *ſcil.* when it hath continued in the lineal deſcent of lord and tenant without alienation, 143. 147. and it may be either in ſocage or knights ſervice tenure, 152.
  - How it differeth from other ſervices, *ſcil.* in
    - Acquittal, 144.
    - Warranty, if the lord then being hath received homage of the tenant or his anceſtors, elſe may the lord diſclaim, 143. 145. And upon diſclaimer the ſeigniory is extinct, and the tenant ſhall hold of the lord next paramount; therefore an abbot or prior may not diſclaime, 146.

Grand Serjeantie. Lib. 2. Cap. 8.

- **Grand Serjeantie.**
  - The ſervice wherein.
    - The ſeveral kinds thereof.
      - When one holdeth of the king to do ſome ſpecial ſervice to the king (for the moſt part within the realm), 155. in proper perſon, 153. or by ſome other, 157.
      - When one holdeth of the king by cornage, 156.
    - The nature of it.
      - Called grand ſerjeanty, *quaſi magnum ſervitium*: it can be held of none but the king, 154. 156.
  - The incidents thereto.
    - Ward, 158.
    - Marriage, 107, 108.
    - Relief, which is the value of the land for a year, *ultra reprizas*, 154.

Petit Serjeantie. Lib. 2. Cap. 9.

This is to render ſome ſmall thing touching the war, as bow, arrow, &c. 159. which although it be ſocage in effect, 160, yet it can be held of none but of the king, 161.

Burgage. Lib. 2. Cap. 10.

Where this tenure is, *ſcil.* where the inhabitants of ſome eminent borough ſo called heretofore, (which now are cities and counties), from whence come the burgeſſes to the parliament, 164. do hold of the king or ſome other ſpiritual or temporal lords by yearly rent, which is but ſocage, 162, 163.

- Burgage.
  - How it differeth from other places, *ſcil.* in their cuſtoms only; of which note,
    - What cuſtoms good and allowable.
      - That the youngeſt ſon ſhould inherit either ſolely as heir, as in borough Engliſh, 165. 211. or with all his other brothers, as in gavelkind, 210.
      - That the wife ſhall be endowed of the tenements of her huſband, 166.
      - That a man may deviſe his land by teſtament, and that to his executor to ſell, or to his wife, 167, 168, 169.
      - And ſuch generally as ſtand with reaſon, and have continued time out of the memory of man, 170.
    - What not, *ſcil.* ſuch as are againſt reaſon, *quia malus uſus abolendus eſt*, 212; as if one preſcribes
      - To have for the marriage of the daughter of his tenant, being a freeman, 209.
      - To have amends at his own pleaſure for damage done unto him, 212.

Villenage. Lib. 2. Cap. 11.

- Villenage; of which note
  - The eſtate continuing in regard of
    - When it is, viz. when a man that is villein, or a woman that is termed neife, 186, hold lands of their lord at will to do villein ſervice, which ſervice a freeman may alſo hold by; for the condition of a villein owner of lands altereth the nature of it, but *non è converſo*, 172.
    - The manner of this tenure:
      - How many ſorts there are thereof, viz. Villein
        - Regardant, which term is only proper to a villein, 184. when a man hath a manor to which a villein is regardant, 181.
        - In groſs.
          - When a villein regardant is alive noted by deed, 181.
          - When one is ſeiſed of a villein by preſcription, 175. 182. wherein, as in ſuch like, one may not preſcribe but by ſhewing a deed, &c. in him and his anceſtors, whoſe heir he is, 183.
          - When one confeſſeth himſelf to be a villein in court of record, 175. 185. as a baſtard cannot be a villein otherwiſe, 188. and then this iſſue born before ſuch confeſſion is free, 176. born after is bond, although the mother were free, 187.
      - The miſchiefs thereof
        - To the perſon of the villein.
          - The lord may ſeize his villein, although a chaplain ſecular, 202.; but if the lord maim his villein, the king it ſeemeth may puniſh it, 194.
        - To his poſſeſſions.
          - His lands and goods are his lord's, by ſeizure, not otherwiſe, 177. unleſs the king be lord, *cui nullum tempus occurrit*, 178.
          - His reverſions, 179. and his advowſons *plein d'incumbent* by claim, 180.
  - The means how he may be free.
    - Expreſly by charter of manumiſſion, 204.
    - Implied. This is
      - For a time only.
        - When a villein entreth into religion, 202.
        - When a neife taketh a baron a freeman, 202.
      - For ever.
        - By ſuit,
          - Of a villein againſt the lord;
            - Where he ſhall be anſwered as in appeals of death, 189. appeals of rape, 190. as executor, 191, 192. if the lord make not proteſtation that he is his villein. 193.
            - Where he ſhall not; for in other actions villenage in the defence or plea is a good plea in abatement of the action, 195, 196. as alſo is outlawry, 197. attainder in *præmunire*, 199. profeſſion in religion 200. Excommunication pleaded by the letters of the ordinary a good plea till abſolution, 201.
          - Of his lord againſt the villein;
            - If his lord bring a *præcipe*, &c. or other action of debt, treſpaſs, &c. 208.
            - Or an appeal of felony not grounded on an indictment, if it be found with the defendant, 208.
        - Otherwiſe,
          - If his lord make an obligation to his villein, or a leaſe, or feoffment, 205, 206.
          - But it ſeemeth a leaſe at will, for the uncertainty is no franchiſement, 207.

Rents. Lib. 2. Cap. 12.

Rents are three forts.

- Rent ſervice, which is reſerved upon a tenure; where note,
  - How it hath beginning.
    - Whereſoever the tenant holdeth of his lord by certain rent, 213. whether it be upon a gift in taile for life or for years, 58 214. or upon a feoffment in fee before the ſtat. *quia emptores terrarum*, 216, 217. for which a diſtreſs is incident of common right, and the tenant is not bound to tender it elſewhere than upon the land out of which it iſſueth, 341.
    - But then the reverſion muſt remain in him who hath the rent, 215. 228. 346. for rent paſſeth as incident to the reverſion, 572. but not the reverſe, 229. for where no fealty is there can be no rent-ſervice, 227.
  - *How a determination of it.*
    - In part by the purchaſe of parcel of the land; for it is apportionable, unleſs it be ſo entire as it cannot be ſevered; and then ſuch ſervices as are annual are clearly extinct; ſuch as are not, go out of tho remnant that is left, 222, 223.
    - In all by diſſeiſin.
      - By a ſtranger: as if one be diſſeiſed of a manor, and the t nants attorn by paying the rent to the diſſeiſor and he die, and his heir be in by deſcent, 587. if it had been of another rent in groſs; it h d been a diſſeiſin to me, but at mine election, 588, 589. but if I had given parcel of the manor in tail, before non-payment of the rent, tenant in tail continuing in poſſeſſion, it could have been no diſſeiſin to me; for that by the gift it is ſevered f om the manor, 590, 591.
      - By the tenant himſelf; wherein note,
        - The divers kinds of diſſeiſin; which are,
          - Reſcous, Replevin, Incloſure, } 237.
          - and, which is common to the others,
          - Menacing of him which ſhould demand it, 240.
        - The means to recover the rent when any diſſeiſin is, viz. by an aſſiſe, which is *vox æquivoca*, in this ſenſe taken for a writ of aſſiſe, 234.
- Rent-charge, viz. when one granteth rent with a clauſe of diſtreſs, 218. or when rent is granted upon equality of partition; where note, 251, 252, 253,
  - How a grant of ſuch a rent doth inure; *viz.* either
    - By diſtreſs and avowry in a court of record to charge the land, 219.
    - By a writ of annuity to charge the perſon of the grantor, 219. unleſs
      - There be a ſpecial proviſo for not charging the perſon, 220.
      - Or that the grant be only that if ſuch a rent be unpaid to *J. N.* that he may diſtrain in ſuch a place, 221.
  - By what means ſuch rent may be loſt.
    - By purchaſe of parcel of the land charged, the whole rent is utterly extinct; but if parcel deſcend, the rent ſhall be apportioned, 224.
    - By diſſeiſin it may be interrupted; the cauſes whereof are four: —— Reſcous, Replevin, Incloſure, Denial, } 238.
- Rent ſeek; in which conſider,
  - How it hath the original.
    - By grant:
      - If one grant rent out of land without clauſe of diſtreſs, 218.
      - If one hold by fealty and rent, or by homage fealty and rent, and the lord grant the rent only, or grant the leaf, reſerving the rent, 225, 226.
    - By other accidents; as if there be lord meſne and tenant, the tenant holding over by 5s. rent, the meſne holding over by 12d. the lord purchaſeth the tenancy, the meſnalty is extinct, yet ſhall the meſne have the ſurpluſage of the rent, which is 4s. as a rent-ſeek, 231, 232.
  - How it may be recovered when it is loſt.
    - Not by diſtreſs, for that were contrary to the name of rent-ſeek, *quaſi redditus ſiccus*, 218.
    - But if the grantee have had ſeiſin thereof, if he be diſſeiſed of it, which is by denial, encloſure, 239. he may have an aſſiſe, 233. 235.

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Parceners. Lib. 3. Cap. 1. and 2.

- The diver. kinds.
  - By the common law are females, or the heirs of females, which come to their land by descent; so called, because they are compelled to make partition by a writ *de participatione faciendâ*, 241, 242. 254.
  - By custom are heirs in gavelkind, 265.
- Parceners.
  - How it may be had.
    - By writ,
      - At whose suit, viz. not only of the parceners, but against others, as tenant by the curtesy, 264.
      - In what manner, viz. the sheriff, by the oath of twelve men, must set out the parts of all the parceners, as well parties to the writ as not, 276. and certify to the justices under his seal, and the seal of the jurors, their partition, 247, 248, 249.
    - Otherwise,
      - By agreement amongst themselves, either with or without deed, 250, 251, 252. in which the parts of all the parceners may be equally set out, or else the part only of one or more, and the rest to hold still in parcenary, 243. 276.
      - By help of friends, where the eldest must choose first, 244. unless herself set out the portions, then she must choose last, 245.
      - By allotment, 246.
      - By hotchpot, which hath only for the donee in frankmarriage, or her heirs; which is done by putting the land which was given her in frankmarriage to the rest which descended from the same ancestor to other coparceners in fee, and to take back so much as with that she had before doth amount unto a full purparty, 266, 267, 268, 269, &c.
  - Certain rules touching partition.
  - How it may be defeated, being made
    - By those that were not parties to the partition;
      - If the purparty of his ancestor were unequally set out, 255.
      - If the lands in fee were allotted to one, to the other the lands in tail, and the tenant in fee hath aliened her part, 260.
    - By those that were parties,
      - For impediments annexed to their person at the time of the partition:
        - Infancy, if after his full age he doth not agree unto it, 258.
        - Coverture, if her purparty were not equal with the rest, 256, 257.
      - For eviction of that which was assigned by lawful title; for then he may enter and have a new partition made of the remnant, 262, 263.

Joyntenants. Lib. 3. Cap. 3.

- Joyntenants.
  - How his estate hath its first creation.
    - Of what things.
      - Of lands and chattels real and personal, 281.
      - Of contracts and covenants; as an obligation, 282.
    - By what means.
      - By title, when one enfeoffeth divers of lands to hold jointly, 277. but baron and feme in such case are but one person in law, and shall have but one part, 291.
      - By fort, when divers disseise one, 278. which is when they put him out without title which was rightfully seised, 279.
  - The nature of jointenants considered.
    - In the quality of this estate.
      - They are seised all of them of the entire, 288. and by the common law not compellable to make partition, 290.
      - The survivor shall have the whole, 280. which a devise by will cannot prevent, but only some act executed in the life of the joyntenant, and this the survivor shall hold discharged of a rent-charge; but not of a lease for years made by his companion, although it be to begin after the death of the lessor, 286. 289.
    - In the quantity; for either it is
      - A joint freehold and joint inheritance, 283.
      - A joint freehold and several inheritance, 283.
      - A several freehold and joint inheritance,
        - By the form of the gift of the giver, 283, 284, 285.
        - By the act of one of the jointenants; as if one make a lease for life, and die living lessee for life, by this he hath severed the freehold, but not the inheritance. *Quære*, for the contrary seemeth the better opinion, 302, 303.

Tenants in Common. Lib. 3. Cap. 4.

- Tenants in common.
  - Of what things a tenancy in common may be.
    - Of lands
      - By prescription.
      - By grant
        - To a common person.
          - If one of divers jointenants alien in fee, or in taile, the alienee is tenant in common with the others, 292. 294, 295, 296. 304.
          - If one parcener alien her part, it is so likewise, 309.
          - If *A.S.* enfeoffe *T.S.* of the moiety of his lands, not assigning it in severalty, 299. and generally when two or more hold land in fee, or taile, or for life, 300, 301. undivided, and by the common law not compellable to make partition, 318. by several titles, 292.
        - To two bodies politique, or a body natural and a body politique; for they cannot be jointenants, 296, 297.
    - Of chattels
      - Real, 319, 320.
      - Personal, 321.
  - How they shall maintain suit against
    - Strangers in action touching the realty they shall sever, unless the thing they sue for be so entire as it cannot be severed; touching the personalty, they shall join where jointenants and parceners join in both, 311, 312, 313, 314, 315, 316, 317.
    - One another.
      - They may maintain an *ejectione firmæ*, 322. and an ejectment *de gard*, 323.
      - But no action of trespass *quare vi et armis*, nor any action of chattels personal and real not severable, but in the first come first served, 323.

Estates upon Condition. Lib. 3. Cap. 5.

- Estates upon condition are of two sorts, *scil.* upon condition
  - *In fait*; the consideration whereof is double.
    - In the creation of them,
      - What conditions may be made,
        - For the manner of them.
          - Precedent; as if a man make a lease for years upon condition that if he do such an act within such a time, that then he shall have fee, 349, 350.
          - Subsequent, when the condition followeth in descasance of the estate precedent, 350.
        - The matter.
          - Such as are against law are void; as that a man seised in fee should not alien at all, 360.
          - Such as agree with the law are good; as
            - Not to alien to such an one, 361.
            - that tenant in taile shall not discontinue, 362, 363. and by such condition it is said the right of the taile may be preserved to the issue; *quære quomodo*, 364.
      - How they may be made.
        - Upon what estates.
          - When one maketh a gift in taile, a feoffment in fee, a lease for life or years upon condition, 325, 326.
          - When lands are mortgaged in such manner, 332, 333, 334, which because it is payment of money, or something in satisfaction thereof which is as good if it be accepted, 334, there must be considered
            - The persons
              - By whom the payment should be made.
                - By the feoffor only, if no day be limited for the payment, 337.
                - By others; as by the heir, if the feoffor die before the day of payment, 334, or by his executor, 337, or feoffee, 336. Of whom the feoffee in mortgage must receive the money upon lawful tender, or else he shall lose the land, and yet be without remedy for the money, 335. 338. But if a stranger tender it, he is not bound to receive it, 334.
              - To whom, *scil.* the feoffor himself, or if he die before the day, to his executor, unless it be expresly appointed to the heir, 339.
            - The place where.
              - If none be appointed, some say the feoffor must seek the feoffee any where within England, 340; others say it sufficeth if he tender it upon the land. *Quære. ibid.*
              - If there be a place appointed (as it is good to have it as certain as may be), 342, the feoffee need not receive the money elsewhere; but if he do, it is good, 343.
        - By what means *A.* *
    - In the operation of them, *B.* †
  - In law, where the law itself annexeth it, 378; and therefore in pleading there need no deed to be shewed, 378. This is annexed either
    - To officers of trust, that the trust reposed be performed by himself or his sufficient deputy, if the grant be to be executed by a deputy, 378, 379.
    - To lands,
      - Where the estate dependeth upon a contingency; as if a lease be made to baron and feme during the coverture; or as if a lease be made to have as long as the lessor is abbot, 380, 381, 382. Where it was conveyed upon confidence; as where lands are devised to executors to sell to the behoofe of the testator, 383.

* For which *Vide* subsequent page.

† For which also *Vide* subsequent page.

Eſtates upon Condition. Lib. 3. Cap. 5. Continued.

A. By what means eſtates upon condition *in fait* are created.

- Without deed; as if a condition be made upon the livery, 359.
- With deed; in which note,
  - The force of the deed; for a condition to defeat a franktenement cannot be pleaded without deed, but for a chattel it may, 365. yet the jury, by a verdict at large, may find ſuch a condition without, and the party may take benefit of it if he be not enforced to plead it, 366, 367, 368, 369.
  - The form of it,
    - In regard of the words which import a condition, *ſub conditione*, 328. *proviſo ſemper et ita quòd*, 329. *ſi contingat*, with a clauſe of re-entry, 330, 331.
    - In regard of the faſhion of the deed; for either it is
      - Poll; and then it is doubted whether the feoffor may plead the condition, becauſe by intendment it appertaineth to the feoffor; yet it ſeemeth he may plead it, *quære*, 375, 376, 377.
      - Indented. In this obſerve
        - The manner of making them,
          - In the firſt perſon, 372.
          - In the third perſon, 371. and both are equally good, if mention be made that both perſons have put to their ſeals, 373.
        - The manner of pleading them, when the ſhewing of one part is as good as of the whole; for be it bipartite or tripartite, it is all but one deed, 370.

B. The operation of eſtates upon condition *in fait*.

- Whom do they tie; *ſcil.* any
  - That come in by deſcent; and although there be divers diſſeiſins and deſcents paſt, yet the working of a condition ſhall take place, 391, 392. 409.
  - That come in remainder, altho' the particular tenant only receive the condition, 374.
- How they do tie thoſe that are ſubject thereunto *ſcil.* either
  - To leave their eſtate entire, and detain but the uſe only for a time; as when a leaſe is made, and rent reſerved with a condition to re-enter upon non-payment, and detain it until, &c. in manner of a diſtreſs, 327.
  - To wipe away the whole eſtate in ſuch degree, diſcharged as it was at the time of the making of the condition, 358. This is
    - Upon breach of the condition, where the feoffor may enter.
      - And in ſuch caſe, where an entry is congeable, the franktenement reſteth not without entry, 351.
      - But ſuch entry or re-entry can be reſerved to none but the feoffor and his heirs, 347. as *Richell*'s caſe is, 720, 721, 722, 723, 724. For if a feoffment be made to pay a yearly rent to a ſtranger, the condition is good, yet the rent is but a penalty to the feoffee, *ibid.*
    - Upon ſuch an act done that the condition cannot afterwards be performed.
      - By the act of God; as by the death of them to whom the condition is to be performed; but if ſome of them only be dead, the feoffee muſt perform it to the other as near the meaning of the parties as he may, and ſo be diſcharged, 352, 353, 354.
      - By the act of the party, *C.* Vide *infra*.

C. Acts of the party that the condition cannot be performed afterward by him, and yet he ſhould perform the condition as if it were to make a feoffment, and the feoffee

- Make a feoffment or a leaſe for life to another, 355.
- Or make a leaſe for years, 356.
- Or take a wife, if he were ſole at the time of the feoffment, 357.
- Or if he charge the land, *quære de hoc*, 358.

Eſtates upon Condition. Lib. 3. Cap. 6. and 7. Continued.

Deſcents. Cap. 6.

- Deſcents.
  - When deſcents do take away the entry of ſuch as have right.
    - Upon a diſſeiſin, when a diſſeiſor being a body natural, 413. dieth naturally, 410, ſeiſed in fee ſimple, 385. 387. or a donee in taile from a diſſeiſor dieth ſeiſed in taile, 386, 387, in poſſeſſion. 88. and this by courſe of law doth immediately deſcend to his iſſue or ſome collateral heir, 389. 394, not party to the diſſeiſin, 395. But an eſcheat for want of his heir is not ſo, 390. And this putteth him that hath right to his action until the impediment be removed; as if the heir endow his mother, 393; or that the diſſeiſee within age entereth upon the heir in by deſcent, 407, 498, in theſe caſes the entry of the diſſeiſee is revived, 409.
    - Upon an abatement between brethren; as if the younger entered upon lands deſcended to the eldeſt, the eldeſt not having made any actual entry, 396, and dieth, ſuch deſcent taketh away no entry, 396. So it is of two coparceners, if one enter into the whole, 398. but if he which abateth were a baſtard in the law of the land, yet a *mulier* in the ſpiritual law, and died ſeiſed without interruption, ſuch deſcent doth not only bar the *mulier* of his entry, but alſo of his action, 399, 400, 401.
  - What manner of perſons ſhall not be prejudiced by ſuch deſcents.
    - In regard of their eſtates, leſſee for years; for he leaveth the reverſion in the heir which is in by deſcent, 411. but it is otherwiſe of a tenant for term of life, 411.
    - In reſpect of
      - The circumſtances.
        - Of time in which the diſſeiſin and deſcent was, viz. if it be in time of war, it taketh away no entry, 412.
        - Of making the claim
          - Expreſly.
          - Implicatively, by bringing of an action; but if a deſcent be caſt *dum curia adviſare vult, quære*, 422.
      - The privileges of the perſons of ſuch as ſhould make their claim,
        - For defects
          - In themſelves.
            - Infancy, 402.
            - Coverture, 403. if no title of entry were given but only the coverture, 404.
          - In others; as the heir ſhall avoid a deſcent caſt in the time of his anceſtor *de non ſane* memory, as well as he ſhall a feoffment; neither of which the anceſtor himſelf could avoid, 405, 406.
        - For impediments. *Vide A. infra.*

- A. For impediments.
  - For diſtance of place; as if he were out of the realm
    - About the king's affairs, 439.
    - Otherwiſe, for ſuch by intendment cannot have notice of things done in the realm, 440. and ſuch ſhould not have been barred by a fine before the ſtatute of non-claim, 441.
  - By receluſe of their perſons of neceſſity.
    - Compulſive; as if he were in priſon, 436. for neither outlawry, nor recovery by default, ſhall bar ſuch an one, which are matters of record, 437, 438.
    - Civil, for the aid of their profeſſion; therefore if one enter into the lands of an abbey in time of vacation, and die ſeiſed, *quære* if ſuch deſcent ſhall bar the next elected abbot of his entry, 443.

Continual Claim. Cap. 7.

- Continual Claim.
  - How this claim muſt be made. For this conſider
    - The perſons which ſhould make it.
      - He himſelf which then hath title of entry, whoſe claim ſhall avail for thoſe in remainder or reverſion, 416.
      - Some other for him; as his ſervant; which being made by his commandment, and in his name, ſufficeth, if it be made in ſuch effectual manner as the maſter himſelf durſt have done it at the time of the commandment given, 432, 433, 434. otherwiſe *quære* how it ſhall avail, 435.
    - The circumſtances in making of it.
      - Of time. It muſt needs be made within the year and day of the death of the diſſeiſor, elſe it giveth no benefit of entry to the diſſeiſee, 423, 424, 425, 426, 427, 428.
      - Of place.
        - In the land whereof one is diſſeiſed, or in parcel of it, in the name of all in the ſame county, 417, 418.
        - If one dare not enter into the land itſelf, then in ſome place ſo near the land as he dare, 419, 420, 421.
  - The operation of it when it is made.
    - For purging the preſent *tort*, it deſeateth the eſtate upon which the claim was made; as if it were upon a tenancy in taile, the continuance of occupation afterwards is a new diſſeiſin, which giveth a fee, 419, for which the claimor may maintain an action of treſpaſs, or *quare vi et armis, &c.* or upon the ſtatute 5 *R.* 2. 7. or 8. *H.* 6. 9. 430 431.
    - For preſerving the future right of entry after ſuch claim made; for then the entry of the claimor is congeable, notwithſtanding the deſcent of any, 414, 415. 422.

* * * *

- **Releases.**
  - **The making of them; which is to be considered,**
    - **In the manner of making of it in respect of**
      - **In the matter whereof it is made; for either it is**
        - Of lands, 444.
        - Of other things; as
          - Actions
            - Real, which barreth not an entry, 496.
            - Personal, which barreth not the repris. l of personal things, 497, 498.
            - Either of these is a bar of mixt actions, as
              - Waste, 492.
              - Assise, 494.
          - Appeals; which barreth an appeal of murder or robbery; and so doth a release of all manner of actions, 500, 501. and an appeal of mayhem by a release of actions personal, 502.
          - Errors; for other releases bar not by bringing a writ of error to reverse an outlawry, 503.
          - Executions; which a release of all actions will not bar, unless it be a *scire facias* after the year, 504, 505, 506, 507.
          - All manner of demands. This is the surest release, 508, 509, 510. but a release of all manner of quarrels, *quære* of what effect it is, 511.
      - **The persons to whom a release of right of land may be made; either to the tenant**
        - Of the freehold,
          - In deed, 447.
            - By a descent without actual entry, 448.
            - By suit in law; as
              - If the tenant in a *præcipe* alien depending the suits, a release to him notwithstanding is good, 490, 491.
              - To the vouchee, who is supposed tenant in the eye of the law, 491.
            - By reason of an ancient right remaining in him to whom the release is made; as between lord and tenant, if the latter be disseised in regard of the privity, this release is good as to the extinguishment of the seigniory, 454. 458. but a release to the tenant which hath made a feoffment is void, 457. so it is between donor and donee in tail, 455 so between lessor and lessee, but then the rent only is extinct, and not the reversion given away, 456.
          - In law, 417.
        - In possession; as to
          - Lessee for years, after his actual entry, 450. lessee at will, as it seems, 460. but not to him that occupieth only by permission of the owner without any lease, and that is for want of privity, 461. unless it be between feoffor and feoffee upon confidence, 461, 462, 463.
        - In reversion sometimes; as if a disseisor make a lease for life, 449. but not to one in remainder *in droit*, 451. and such a release shall benefit the particular tenant, if he have the deed to shew, *et è converso*, 453.
      - The form of a release. *Vide A. infra.*
    - **How it inureth.**
      - Between the parties to the release, it inureth by way of
        - *Mitter l' estate*, as between jointenants, 305.
        - *Mitter le droit*, as between disseisor and disseisee, 306. 466.
        - Extinguishment, 307, 308. and this is where he to whom the release is made cannot have the things released; as between lord and tenant for service, or for rent charge, or common, 479, 480.
      - Against strangers
        - Entitled by the right; as if the releasee had accepted it of a stranger upon condition, or had granted a rent-charge, he shall avoid neither of them by a release, without an actual entry of him who had right, 476, 477.
        - Claiming of wrong.
          - If there be two disseisors, and the disseisee release to one of them, he shall hold out his companion; but a release to one of the feoffees of a disseisor inureth to both, 472, 473, 474, 475.
          - If an infant disseisor alien in fee, the alienee dies to whose heir the disseisee re-entereth, he shall bar the disseisor, continuing yet within age, in a writ of right, 478. 481, 482, 483, 484, 485. in which writ the mere right cometh in question, and not his lawfulness of possession, 486, 487. 489. and he must count in seisin of him or his ancestors, and prove it according to the count, 514.
    - **How it must be pleaded.**
      - A release of real actions can be pleaded by none but the tenant of the land, 494.
      - If a disseisor make a feoffment, &c. and yet take the profits, and the disseisee releaseth unto him all real actions, and yet sueth afterwards a writ of entry, in nature of an assise, against him, *quære* how the disseisor shall plead this release to take any advantage thereby, 499.
  - **The effect of a release.**
    - **A. The form of a release; for the which note,**
      - That no future right passeth by way of release, notwithstanding the common form, 445, 446. therefore a release
        - Of a debt due upon an obligation before the day of payment is good, 512. of a rent-service before the day void, 513.
      - If it be made to enlarge an estate, the estate intended must be made and expressed, 465. 468. but if the releasor hath but a right, 469, 470. or if the releasee had a fee before, it needeth not, 467.

Confirmation. Lib. 3. Cap. 9.

Confirmation.

- The form of it, 515. in which these words *dedi et concessi* amount to as much as *confirmavi*, 531. which (as some others) inureth by way of extinguishment; as where the lord granteth his rent to the tenant, or the grant of a rent-charge, 543, 544.
- The force of it,
  - How it inureth.
    - Where it inureth, viz. where there is such a possession before whereupon a confirmation may work; therefore if one take away my villein in gros, and I confirm his estate, it is void, 541, 542.
    - In what manner.
      - Expressly.
      - By implication; as if the heir of a disseisor being in by descent, the disseisee joineth with him in a feoffment, here is the confirmation only of the disseisee, and the feoffment of the other; but if the disseisee shall bring a writ of entry in the *per et cui* against the feoffee, *quære* now he shall plead this, 534.
    - To what purpose.
      - Merely to confirm an estate made before, which is the proper force of it; for *confirmare idem est quod firmum facere*; as when disseisee confirmeth the estate of the disseisor, 519, 520, 521, 522. or of a lessee to a disseisor, or a rent-charge granted by a disseisor, though he after enter into the land, *quære de hoc*, 527. or when the lessor confirmeth the grant, 529. 547. or the lessee of his lessee, 516, 517. or when the lord confirmeth the estate of the tenant of the land where the seigniory, rents, and common, remain notwithstanding, 535, 536, 537. or where the parson of a church chargeth his glebe by the confirmation of the ordinar. or patron seised in fee, it is made perpetual, 528. 648. *quære*, whether the patron and chaplain may not do the like, 530.
      - To confirm with some addition.
        - By enlarging the estate confirmed.
          - To commence presently, 524. 526. 533.
          - To take effect by way of remainder, 523. where it is necessary to have these words, *aver et tener*, 525. but by neither of both a rent-charge can be enlarged by confirmation, but by new grant upon surrender of the old; but the rent *in esse* before may be, 548, 549.
        - By altering of it; as a lord by confirmation may diminish the services of his tenant, but not exchange them for other, or reserve new, 538, 539. unless he alter it by frankalmoigne, which indeed is no corporal service, 540.

Attornment. Lib. 3. Cap. 10.

Attornment.

- Where it needeth.
  - Wheresoever the lord, or he in reversion, grants the service of his tenant, or what lies in reversion by deed, 551. 568. Without attornment (which is nothing but a consent to the grant) made to the grantee in the life of the grantor, the grant is void; therefore if one make two several grants to two several persons, he to whom the attornment is first made shall have it, 552. and a reversion barely granted without attornment settleth not, 567. But if it be granted by fine, the reversion settleth without attornment; but the conusee cannot punish wast, or have relief or other things lying in distress, without it, 579, 580, 581, 582. So they who claim by grant cannot avow without attornment, but such as claim by escheat, 583, 584, or by devise, may, 585, 586.
  - Unless
    - The party which should attorn
      - Have sufficient before the grant; as,
        - Where one jointenant releaseth to another, there lessee need not attorn, 574.
        - Where there is lessee for life, the remainder for life, and the lessor releaseth in fee to him in the remainder, 575.
      - Be the same person which granteth; for then he cannot attorn to his own grant, 578.
    - Where services be granted to the tenant, who hath as great estate in the tenancy as the grantor hath in the seigniory; for there it inureth by way of extinguishment, 561.
- How it is made.
  - By what person, viz. always by him who is tenant to the grantor; therefore,
    - Upon grants of seigniories, the tenants of the manor must attorn, but not the tenants at will, 553. If it be in lease, he in the reversion must attorn, for he is tenant to the lord, 554. 562. but he in remainder must not, for then the particular tenant is tenant *grant al faire avowry*, 557. and if there be mesne and tenant, the mesne must attorn, 555.
    - Upon grant of a reversion, the tenant of the freehold, 571, and tenant in tail may attorn, but he is not compellable, 570.
    - Upon grant of a remainder, the particular tenant, 569.
    - Upon grant of a rent-charge, the tenant of the freehold, 556.
  - In what manner.
    - Expressly, 551. where the attornment by one jointenant, 566, or by one kind of service, if it be held by divers, 563, 564, is as effectual as if it were by all, because the seigniory is entire.
    - Implicatively;
      - By accepting of the grant
        - Of a reversion, 558, 559, 560.
        - Of a remainder; as where the estate of the tenant for life is confirmed with a remainder, 573.
      - By giving *un denier* as seisin of the rent, which includes an attornment, but not otherwise, 565.
      - By re-entering into his term; as if lessor enter upon his lessee for years, or life, and make a feoffment, and the lessee re-enter, 576, 577.

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Diſcontinuance. Lib. 3. Cap. 11.

- Diſcontinuance.
  - What it is, viz. when by wrongful alienation of land, he which hath right cannot enter, but is driven to his action, 592.
  - When it is; in which obſerve,
    - What perſons
      - May diſcontinue. They are either bodies
        - Politick; as an
          - Abbot,
          - Biſhop,
          - Dean, if he alien
            - Part of his deanery, 652.
            - Part of the lands of the dean and chapter, it is not, 652.
          - Maſter of an hoſpital, 657.
        - Natural.
          - Tenant in tail, and driven them which have right to their formedon in deſcender, 595, remainder, 597, reverter, 596, as the caſe is.
          - The huſband, if he alien his wife's land, 594.
      - May not, viz. the parſon or vicar of a church, becauſe they have no fee ſimple, 643, 644, 645, 646, 647. for a fee may be in abeyance, 648. as when tenant in tail releaſeth all his right to a diſſeiſor, 649. or when he granteth all his eſtate, 650.
    - How it may be made.
      - For the means.
        - By feoffment with livery, 611. 631. to ſome other than he in the reverſion, 625, 626.
        - But not by
          - Releaſe without warranty deſcending on him whoſe land is diſcontinued, 598. 600. 601, 602, 603, 604, 605, 606. 612.
          - Confirmation, 607, 608, 609, 610.
          - Grant, 627, 628. altho' the grant by fine, 618, unleſs there was a new reverſion gotten before by the diſcontinuor; as if tenant in tail make a leaſe for life, and after grant the reverſion in fee, 620, 621. 623. but then it muſt be executed in the life of the tenant in tail, 622. 629.
          - Deviſe, 624.
          - Eſcheat, becauſe the lord in ſuch caſe claimeth not in by the diſcontinuance, 642.
      - For the manner of the eſtate.
        - Before diſcontinuance, the diſcontinuor muſt be ſeiſed of that eſtate which is diſcontinued at the time, or elſe there is no diſcontinuance, 637, 638, 639, 640, 641.
        - After diſcontinuance, how long it ſhall ſo continue.
          - For ever, until the right be recontinued by an action.
          - For a time only. *Vide A. infra.*
    - *A.* For a time only, and that depending upon
      - Contingency,
        - Where the tenant in tail maketh a gift in tail, or a leaſe for life, reſerving the reverſion to himſelf, 630.
        - Where a huſband having iſſue by his wife, who had iſſue alſo by a former huſband, alieneth for life, the feme dyeth, leſſee for life ſurrendereth to the baron after the death of leſſee for life, the heir may enter without queſtion; *quære* if he may not before, 636.
      - Condition
        - *In fait*; for if the diſcontinuor enter for breach of a condition, the diſcontinuance is purged, 632.
        - In law; as if an infant diſcontinue, and die in his infancy; for ſeeing ſuch alienation ſhould not have barred the infant himſelf, it ſeemeth it ſhall not bar others, 633, 634, 635.

Remitter. Lib. 3. Cap. 12.

The reaſon of the name, viz. it is an ancient term in law when a man hath two titles unto land, and he cometh to poſſeſſion by the later; and when he is in, the law ſuppoſeth him in by the former, which is the furer title, 659. and the cauſe hereof is, becauſe he ha h no man againſt whom to bring his action for his former title, 661.

- **Remitter.**
  - **When it happeneth.**
    - **How this freehold, which is the puiſne poſſeſſion, muſt come.**
      - To whom, *ſcil.* to none but ſuch as have a freehold in deed or law caſt upon them, 680, 681, 682, 683.
      - **By deſcent,**
        - Natural; as if tenant in taile diſcontinue, and after diſſeiſe the diſcontinuee and die, the iſſue in taile is remitted. 659. 662. notwithſtanding a recovery by feigned title; which
          - If it be not executed, he ſhall bar his execution, 690.
          - If it be executed, he ſhall ſatisfy, 688.
        - Civil; as if an abbot or biſhop alien, and the alienee infeoffeth him again with licence, his ſucceſſor is remitted, and ſhall hold diſcharged of all meſne incumbrances, 686, 687.
      - **By purchaſe,**
        - By act of law;
          - As if the heir in taile within age marry with the diſcontinuee, 665.
          - Or upon diſclaimer of the diſcontinuee, which the demandant cannot hinder, but in ſuch actions where damages are to be recovered, 691, 692.
        - By the act of the party himſelf,
          - Where his entry is congeable: there the taking of any eſtate otherwiſe than by indenture, or matter of record, will not eſtop him of his remitter, 693, 694, 695, 696.
          - Where his entry is not congeable. *Vide A infra.*
  - ***A.* Where his entry is not congeable, there his folly in taking any thing from the diſcontinuee muſt be excuſed,**
    - By his diſagreement thereunto; as if tenant in tail enfeoffe his ſon, and another maketh livery to the other, 684.
    - By other imperfections wherein folly cannot be imputed; as
      - Infancy.
      - Coverture; as if the huſband diſcontinue the wife's land, and the diſcontinuee leaſe it. 666. 671, 672. or the diſſeiſee of the diſcontinuee leaſe it, 678, to
        - Baron and feme, although it were by fine, 669. for in taking any thing he ſhall not be examined, 670 Yet the baron cannot bar his leſſor in an action of waſt, 667. but the feme in default of her baron at the grand diſtreſs may, 668, 669. and ſhe ſhall maintain an aſſiſe againſt him for entry afterwards, 679. and if this be but of a particular eſtate, they in reverſion or remainder are remitted alſo, 673.
        - The feme only, if the baron were then abſent, and after agree unto it, 677.

Warranty. Lib. 3. Cap. 13.

- **Warranty.**
  - The several kinds of it; which are,
    - Lineal, where a man maketh a feoffment with warranty, and this descends to his son; the cause of which name is not for the lineal descent of it, but because the land should have lineally descended if such warranty had not been, 703. 706. 715. The like is of the feoffment of the mother with warranty, 713, 714.
    - Collateral. This is where he that maketh the warranty is collateral to the title; and he upon whom the warranty descendeth cannot convey the same land from the warranty, 705. 717; as
      - If the father disseise the son, and after make a feoffment with warranty, 704.
      - If a man be disseised of lands in fee, and have issue two sons, the youngest releaseth with warranty, this is collateral to the eldest, 707, 708.
      - If the disseisee were of lands in taile, the warranty of the uncle is collateral, 719. And so if a man have three sons, and entail his land to the eldest, with remainder to the second, &c. and the eldest doth discontinue with warranty, 716. 719. As it is of sons, so it is of daughters, 710.
    - Commencing by disseisin; as if the father, &c. being lessee for years, or at will, of his sons, make a feoffment with warranty, 698. or if he be jointenant with his son, and make a feoffment of all the warranty, 700. So if guardian in socage or chivalry make feoffment, 699. So if a disseisee immediately make a feoffment over with warranty, 702. or if one make a feoffment of the house of *A. B.* with warranty to barretors of the country, for fear of whom *A. B.* departeth the house, 701.
  - The quality of it.
    - What words will make a warranty, viz. *Warrantizo* only, 733.
    - What effect a warranty is of, viz. to bar or rebutt, &c. *Vide A. infra.*

A. What effect a warranty is of, viz. to bar or rebutt, &c.; where note,

- What warranties do bar, viz.
  - Lineal, for lands in fee, but not in fee tail without assets, 712.
  - Collateral barreth both, but in cases especially provided, 712. as by the Stat. of *Gloucester* the warranty of the tenant by the curtesy barreth not without assets, although it be by fine levied by the husband only, 724. 728, 729, 730, 731, 732. But tenant in dower or for life are not within the statute's compass, 725. yet if such warranty descend upon an infant, he shall not be barred, 726.
  - Commencing by disseisin doth never bar, 697.
- Whom they bar, viz. none but those upon whom they do descend; therefore they must needs attach in the ancestor, and the warranty by devise barreth not, 734. and warranty doth descend always upon the heir, therefore it never descends upon the brother of the half-blood, 737. nor where the blood is corrupted, 745. 746, 747, at the common law; not by custom, as borough English, or gavelkind, 718. 735, 736.
- How long they bar, viz. until
  - The estate whereunto they be annexed be
    - At an end, 738.
    - Defeated, 741, 742, 743, 744.
  - The warranty be released, and he on whom the warranty doth descend hath the release to shew, 748.

Services by which all Lands and Tenements are held.

- Services by which all lands and tenements are held, are either
  - Free; which are called tenures in focage; and are
    - Spiritual.
      - In frankalmoigne; which is, where a religious houſe or perſon having capacity to take the grant of lands holds by preſcription, or by grant before 18 *h. d.* 1. of any common perſon and his heirs, or by grant of the laſt time of the king and his heirs in *elecmoſynam liberam*, without any certain ſervice limited.
        - Incidents:
          - No fealty, no diſtreſs.
          - Acquittal by the lord againſt all lords paramount, for the not doing of which a writ of meſne lies.
          - It may be changed into a ſimple tenancy by fealty,
            - When the lord of the land is not heir to the donor.
            - If the tenant grant over to a ſecular perſon.
      - For divine ſervice; when a religious houſe or perſon enabled to take any lands in grant holds of his lord lands by any certain divine ſervice to be done.
        - Incidents:
          - Fealty to the lord.
          - Diſtreſs by the lord.
    - Temporal.
      - Proper to the king, petit ſerjeanty; which is, where one holds of the king himſelf, to render at ſome certain time ſome piece of armour or other thing touching the war.
      - Common to the king with the ſubject; and are either,
        - Simple
          - Fealty only; where one holds *per fidelitatem tantùm*; and it is incident to
            - Every eſtate or term, ſo that it be certain.
            - Every ſervice but tenure in frankalmoign.
            - Every attornment and change of heir.
          - Homage; a ſervice to be done to the lord himſelf by the tenant in fee ſimple, fee tail in his own or another's right once in his life, for which the lord cannot diſtrain after refuſal, till the lord require it, and the tenant refuſe. It is
            - Ordinary; which is to be done ſometimes in the life of the tenant, upon legal recovery of lands held to the recoverer.
            - Anceſtrel; where the homage hath continued time out of memory of man in the blood of the lord and tenant.
              - Incidents:
                - Warranty; which binds the lord after the homage received to warranty.
                - Acquittal; to acquit the tenant of any ſervice paramount.
        - Compound *.
  - Bond ſervices are either
    - Knight's ſervice; and it draws unto it ward, marriage, and relief.
      - Proper to the king only, grand ſerjeanty; as to carry his banner, or do ſome corporal and honourable ſervice,
        - With eſcuage; which always draws to it homage, which draws to it fealty.
        - Without eſcuage
      - Common to the king with others:
        - Special caſtleguard, by the corporal guarding of a caſtle or other place, with or without eſcuage.
        - Common eſcuage, uncertain.
    - Villenage; which binds one and the iſſue of his body and eſtate to the will of another; and a villein is
      - Regardant to a manor.
      - In gros,
        - By the confeſſion of the villein himſelf in a court of record, which binds him and his iſſue after.
        - By preſcription; that the lord and his anceſtors have been ſeiſed of the villein and his anceſtors by grant of the lord who had him as regardant to his manor.
      - Every villein may be enfranchiſed
        - By his lord.
        - By himſelf †.

* For which *Vide A.* ſubſequent page.

† For which alſo *Vide B.* ſubſequent page.

Services by which all Lands and Tenements are held. Continued.

- **A.** Compound ſervices common to the king with the ſubjects, conſiſt
  - In payment,
    - Charged at an uncertain time : eſcuage certain.
    - Certain rent:
      - During the lord's reverſion, in burgage and by caſtleguard, or otherwiſe ; and for this rent the lord may diſtrain of common right ; and there are four diſſeiſins to him : — Reſcous, Replevin, Incloſure, Menacing of the demandant.
      - Not during the lord's reverſion.
        - Rent charge iſſuing forth of the land by equal partition betwixt the coparceners, and then diſtreſs lies of common right ; or iſſuing forth of lands by deed, and then the diſtreſs lies by deed ; and the diſſeiſins are five ; — Reſcous, Replevin, Incloſure, Menacing of the demandant, Denier.
        - Rent-ſeck iſſuing forth of the lands by deed, without any power of diſtreſs ; and the diſſeiſins are, — Incloſure, Denier.
  - In doing villein ſervice ; as
    - To carry the lord's manure forth of his village to his land, and there to ſpread it upon the ground.
    - Not to marry his ſon or daughter without paying a fine to the lord.
- **B.** Every villein may be enfranchiſed by
  - The lord's
    - Act.
      - By granting him liberty by his deed, with the word *Manumitto te.*
      - By bringing againſt him a *præcipe quòd reddas*, an action of debt, account, treſpaſs, or appeal of felony, the villein not being indicted before, if the villein recover damages againſt his lord.
      - By granting to him an annuity, or leaſe by deed, or enfeoffe him with livery without deed.
    - Negligence.
      - Where in an action brought by bill, as executor, the lord pleads not by proteſtation that he is his villein.
      - Where in an action to his own the lord pleads not that he is his villein, but during his proteſtation it is found againſt the lord.
  - His own act. —
    - When he enters into religion ; in which caſe the lord hath no remedy but by an action of the caſe againſt the governor of the houſe.
    - When a freeman marries a nief, the lord hath no remedy but an action of the caſe, and the iſſue is free.

END OF THE ANALYSIS.

To be placed before fol. 191.

THROUGH the obliging interference of JOHN HOLLIDAY, Esq; of Lincoln's Inn, with the Executors of the Will of the late Sir THOMAS PARKER, the Continuator of Mr. HARGRAVE's Edition of COKE UPON LITTLETON has been favoured with a Copy of the Notes of Lord Chancellor NOTTINGHAM and Lord HALE, upon that Work. The following Account is given of them in a Note in Sir THOMAS PARKER's own Hand-writing.

"The Notes to this Book, in my Hand-writing, (except one Note in fo. 26. b. and some modern Cases), were transcribed from a Copy of the Lord Chancellor NOTTINGHAM's Manuscript Notes, in the Margin of his Lord COKE's COMMENTARY UPON LITTLETON, which Copy was made for the use of his Son HENEAGE FINCH, Esq; Solicitor-general, afterwards Earl of AYLESFORD, and is now in the Possession of the Honourable Mr. Baron LEGGE, to whose Favour I am indebted for these Notes.

"The Notes in a different Hand-writing were transcribed from a Copy of Lord-chief Justice HALE's MSS. Notes, in the Margin of COKE UPON LITTLETON, presented by Lord HALE to the Father of PHILIP GYBBON, Esq; which Copy was made for the Use of the Honourable CHARLES YORKE, Esq; His Majesty's Solicitor-general. The Book, in which the Notes are in the Hand-writing of Lord HALE, is now in the Possession of Mr. GYBBON; and the Book from which those Notes were transcribed, by the Favour of Mr. YORKE, is now in his Possession.

"T. PARKER. 1758."

ALL Lord HALE's Annotations, and all Lord NOTTINGHAM's, with a very few Exceptions, will be inserted in the Places to which they refer.

It may be proper to acquaint the Reader, that the following Work is continued on the PLAN adopted by Mr. HARGRAVE, and will be completed in Four other Parts, one of which, till the Work is finished, will be given in every ensuing Term.

TRINITY TERM, 1785.

Erratum. In 195, b. last Line, *dele* under the title Conditions.

To be prefixed before Vol. 19.

TO THE

PURCHASERS

OF THE

NEW EDITION

OF

COKE UPON LITTLETON.

MR. HARGRAVE, the editor of ſo much of the NEW EDITION of COKE UPON LITTLETON as has been publiſhed, at length finds his relinquiſhment of the undertaking in an unfiniſhed ſtate quite unavoidable. Numerous and ſevere are the ſacrifices, which he has heretofore made in order to accompliſh the original propoſals in their fulleſt extent. To this moment he feels the effect of thoſe ſacrifices; nor is he likely ever to conquer wholly the diſadvantage already incurred from them. But it might be improper and diſguſting to enter into particulars upon this head, which in its nature is too perſonal to the editor to be intereſting to others. He will therefore be content with generally declaring, that his ſituation is become ſuch, as to render him unequal to any longer ſuſtaining the weight of thoſe labors, which he has ever found incident to the work upon the extended plan of annotation adopted by him from the commencement of the edition, though certainly not belonging to it from the very limited profeſſions and terms originally held out to the Publick. It is from perſonal conſiderations, and in his own defence, that he thus adverts to having paſſed the bounds of the firſt undertaking in the actual execution: becauſe, as he feels himſelf open to cenſure, from thoſe indiſpoſed to yield to indulgent conſtruction, for having done *leſs* than he promiſed, he too plainly ſees the neceſſity of ſtriving to ſoften ſuch cenſure by the recollection of his having alſo done *more*. In truth, had he not raſhly exceeded the limits firſt preſcribed, by wandering into the wide field of annotation, it is moſt probable, that the *whole* of the edition would have been finiſhed long ago, and conſequently that the editor would not now have to mortify himſelf by apologizing for executing only *one half* of it *. This to be ſure is the moſt favourable point of view for the editor; its tendency being to ſhew, that his exceſs of zeal to render the edition *valuable* has been one cauſe of his finally leaving it *imperfect*. If it ſhall be thought proper by others kindly to receive the editor's apology in this form, it

* The COKE upon LITTLETON, excluſive of the preface and index, conſiſts of 393 folios or 786 pages. Mr. HARGRAVE has proceeded in the new edition and actually publiſhed to the end of folio 190 or page 380, which is exactly 13 folios ſhort of one half of the work.

it will qualify his unhappineſs at the painful and trying moment of ſeparation from a very favorite work before its advancement into maturity. Should a leſs indulgent conſtruction be applied to the editor, it will deeply wound feelings already enough exerciſed; but from a conſciouſneſs of being open to ſome degree of exception for what rigid obſervers may ſtile the abandonment of a work long promiſed to be compleated, he muſt in that caſe kiſs the rod, and ſubmit himſelf to the ſeverity of animadverſion with a patient humility.

It is no ſmall conſolation to Mr. Hargrave to accompany this recital of his own failure in the edition, with information of its having fallen into the hands of a profeſſional gentleman * of ſuch a deſcription, as to warrant expecting from him a quick and able execution of the remainder of the undertaking. As Mr. Hargrave underſtands, his ſucceſſor is prompted to engage in the work by an extreme partiality for it, and from having been in the habit of ſtudying and annotating on the COKE UPON LITTLETON. He alſo poſſeſſes the important advantage of having long practiſed in the conveyancing line; to which, as Mr. Hargrave can ſpeak from his own experience as a barriſter in that branch of the law, a familiarity with the law of real property, and conſequently with the writings of LITTLETON and COKE, is peculiarly eſſential. Theſe and other conſiderations claim from Mr. Hargrave much beyond a hope, that the depending edition of COKE UPON LITTLETON will gain conſiderably by change of the editor; and that the new adventurer in this arduous undertaking will ſtamp the remainder of the edition with much greater value, than could be reached by any efforts however vigorous from the original editor.

FRA. HARGRAVE.

Boſwell Court, 18 *Jan.* 1785.

* CHARLES BUTLER, of Lincoln's Inn, Eſquire.

ADDRESS

FROM

Mr. HARGRAVE,

TO THE

PURCHASERS of the NEW EDITION of COKE upon LITTLETON,

Announcing his Relinquiſhment of the Undertaking, and Mr. BUTLER's ſucceeding to it.

de tenants a terme de vie. Sicome deux joyntenants ſont en fee, et l'un leſſa a un home ceo que a luy affiert pur terme de vie, et l'auter joyntenant leſſa ceo que a luy affiert a un auter pur terme de vie, &c. les deux leſſees ſont tenants en common pur lour vies, &c. *

manner may it be of tenants for terme of life. As if two joyntenants bee in fee, and the one letteth to one man that which to him belongeth for terme of life, and the other joyntenant letteth that which to him belongeth to another for terme of life, &c. the ſaid two leſſees are tenants in common for their lives, &c.

Vid. Sect. 295. where this is ſufficiently explaned before.

Sect. 301.

ITem ſi home leſſa terres a deux homes pur terme de lour vies, & l'un granta tout ſon eſtate de ceo que a luy affiert a un auter, donques l'auter tenant a terme de vie, et † celuy a que le graunt eſt fait ſont tenants en common, durant le temps que ambideux les leſſees ſont en vie.

ALſo if a man let lands to two men for terme of their lives, & the one grants all his eſtate of that which belongeth to him to another, then the other tenant for terme of life, and he to whom the grant is made, are tenants in common during the time that both the leſſees be alive.

Et memorandum, *que en touts ‡ auters tiels caſes, coment que ne ſont icy expreſſement moves ou ſpecifies, ſi ſont en ſemblable reaſon, ſont en § ſemblable ley.*

And *memorandum*, that in all other ſuch like caſes, although it be not here expreſſely moved or ſpecified, if they be in like reaſon, they are in the like law.

AND ſo it is if lands bee letten to two for terme of their lives, *et eorum alterius diutiùs vivenți* (1), and one of them granteth his part to a ſtranger, whereby the joynture is ſevered, and dyeth, here ſhall bee no ſurvivour, but the leſſor ſhall enter into the moity, and the ſurvivour ſhall have no advantage of theſe words, *et eorum alterius diutiùs viventi*, for two cauſes. Firſt, for that the joynture is ſevered. Secondly, for that thoſe words are no more then the Common Law would have implyed without them, and *expreſſio eorum quæ tacitè inſunt nihil operatur*. Hereby it appeareth that in caſe of leaſes for life it is more beneficiall for the leſſor to have the joynture ſevered then to have it continue.

(2. Roll. Abr. 89. 90. 1. Rep. 84. b.)

30. Aſſ. 18.

(4. Rep. 73. b. 2. Cro. 378. 417. 696.)

(Poſt. 205. a. Hob. 170. 208.)

Si ſoient en ſemblable reaſon ſont en ſemblable ley. Here Littleton citeth one of the Maximes of the Common Law, That whereſoever there is the like reaſon, there is the like law. *Ubi eadem ratio, ibi idem jus*; or *ubi eadem ratio, ibi idem jus eſſe debet*; for *ratio eſt anima legis*. And therefore *ratio poteſt allegari deficiente lege*. But it muſt be *ratio vera et legalis et non apparens*. And here it appeareth that *argumentum à ſimili* is good in law. *Sed ſimilitudo legalis eſt caſuum diverſorum inter ſe collatorum ſimilis ratio, quod in uno ſimilium valet, valebit in altero, diſſimilium diſſimilis eſt ratio.*

Vid. Sect. 1.

* *&c.* not in L. and M. or Roh. † *Meſme* added L. and M. but not in Roh. ‡ *les* added in L. and M. but not in Roh. || *Semble* L. and M. and Roh.

(1) Here lord Coke ſpeaks only of a jointenancy for life; in which caſe, the words *and the ſurvivor of them* are merely words of ſurpluſage; as without them the lands, upon the death of one jointenant, go to the ſurvivor. But in the creation of a jointenancy in fee, particular care muſt be taken not to inſert theſe words. For the grant of an eſtate *to two and the ſurvivor of them, and the heirs of the ſurvivor*, does not make them jointenants in fee; but gives them an eſtate of freehold during their joint lives, with a contingent remainder in fee to the ſurvivor. Whether, during their joint lives, the fee continues in the grantor, or remains in abeyance; and whether they can convey their eſtate; and what is the proper mode of conveyance to be uſed for this purpoſe; are points which have been much agitated, and which, perhaps, are not yet quite ſettled. They were all mentioned in the caſe of Vick v. Edwards, 3. P. Will. 372. In that caſe, lands were deviſed to B. and C. and the ſurvivor of them, and the heirs of ſuch ſurvivor in truſt to ſell: lord chancellor Talbot held that the fee was in abeyance; that the truſtees joining in a fine of the premiſes, might make a title to a purchaſer by way of eſtoppel; and that the heirs joining might be of uſe, as it would ſupply the want of proving the will; but that, in every other reſpect, it would be void. Five years before this caſe was heard, the ducheſs of Marlborough having contracted to purchaſe an eſtate from the deviſees in truſt of Sir John Wittewronge's will, where the deviſe was worded in a manner ſimilar to that upon which the caſe of Vick v. Edwards aroſe, application was made to Parliament for an act to enable the truſtees to convey the eſtate to her.—In the preamble of the act it is mentioned, "That the deviſe "of the premiſes by the will of Sir John Wittewronge was not effectual in the law to veſt the abſolute fee ſimple thereof "in the truſtees therein named, there being, by the words of the will, no fee veſted but upon a contingency of ſurvivorſhip, "and which could not veſt or take effect till after the death of two of the truſtees." But notwithſtanding the caſe of Vick and Edwards, it ſeems now to be the prevailing opinion that, in theſe caſes, the fee is not in abeyance, but remains pending, and ſubject to the contingency, in the grantor and his heirs.—In ſupport of which it is ſaid, that the whole fee muſt be ſuppoſed to be in the grantor at the time of the conveyance; that ſo much of it as he does not part with continues in him; that in this caſe there is ſomething undiſpoſed of, viz. the intermediate eſtate, till by the death of one of the parties the remainder veſts, and is executed in the ſurvivor; which, therefore, continues in the grantor, as part of his old reverſion; That if a remainder is limited on a contingency, and the contingency fails, the donor has the land again.—This is called his poſſibility of reverter; and that this poſſibility of reverter is in fact nothing but his old reverſion. Beſides, the law never ſuppoſes the fee to be in abeyance, unleſs where it is neceſſary to recur to that conſtruction for preſerving ſome eſtate or right. But that in the preſent caſe no ſuch neceſſity exiſts. The caſes of Carter and Barnardiſton, 1. P. W. 505. Purefoy v. Rogers, 2. Saund. 380. and many other caſes of authority, ſtrongly favour this latter opinion.—As to the queſtion, whether the contingent remainder,