celuy en le reversion to the lord, &c. est tenant al seignior, E ...

vie. Causa patet.

ent que celuy en le sion must attorne to reversion attorna al the tenant for life by tenant à terme de vie force of this grant, or per force de cel grant, otherwise the grant is ou auterment le grant voide, for that hee in

* Yet hee shall * Et uncore il ne not hold of the tetiendra del tenant a nant for life during terme de vie durant sa his life. Causa patet, &c.

tient, &c. This is added, and not in the originall, and is against law, and therefore to be rejected.

Tenant al seignior, &c. Here is to bee underest voide, pur ceo que the reversion is tenant stood a diversity when the whole estate in the seigniory is fuspended, and when but part of the cstate in the seigniory is suspended. And in this case the seigniorie is suspended but for terme of life; [a] and [a] 34. Aff. p. 15. therefore as to all things concerning the right it hath his being; but as to the possession during the particular estate the grantee shall take no bene-

fit of it; therefore during that time he shall have no rent, service, wardship, releefe, harliot, or the like, because these belong to the possession: but if the tenant dieth without heire, the tenancie shall escheat unto the grantee; for that is in the right; and yet when the seignioric is revived by the death of the tenant, there sliall be wardship: as if the tenant marry with the seignioresse and dieth, his heire within age, the wife shall have the wardship of the heire. Also in the case that Littleton here putteth, albeit the seigniorie be suspended but for life, yet some hold that he cannot grant it over, because the grantee tooke it suspended, and it was never in esse in him. But if the tenant make a lease for yeares or for life to the 5. E. 3. Twong's case, lord, there the lord may grant it over, because the seigniorie was in esse in him, and the sec (Ant. 298. b.) simple of the seigniorie is not suspended. But if the lord disseise the tenant, or the tenant enfeoffe the lord upon condition, there the whole estate in the seigniorie is suspended, and therefore he cannot during the suspension take benefit of any escheat, or grant over his feigniorie.

Sect. 563.

ITEM, si soient seig- ALSO, if there bee HERE it appear- 4. E. 3. 55. Malman's case, nior et tenant, et lord and tenant. le tenant tient del and the tenant holdeth seignior per xx. ma- of the lord by xx. manners des services, et le ner of services, and the seignior granta son lord grant his seigniofeigniory a un auter; si ry to another; if the tele tenant paya en fait nant pay in deed any ascun parcel d'ascun de parcell of any of the serles services al graun-vices to the grantee, tee, ceo est bone attorn- this is a good attornement, de et pur touts ment, of and for all the les services, coment que services, albeit the inl'entent de le tenant fuit tent of the tenant was to d'attourner sorsque de attorne but for this parcel parcel, pur ceo que cell, for that the seigle seigniory est frentier, niorie is intire, although tent del tenant coment que ils sont di- there bee divers man- suit d'attorner, Ec,

tornement being made 35. H. 6. 8. per Prisott. for parcell, is good for (Ant. 309. b.) the whole; for feeing hee hath attorned for part, it cannot bee void for that, and good it cannot be unlesse it be for the whole: but of this sufficient hath beene said before in this chapter.

Paya ascun parcell des services. Here is the fourth ex- 40. E. 3.34. ample of an attornement (4. Rep. 8) in law; for payment of any parcell of the fervices is an agreement in law to the grant.

Coment que l'en-

This paragraph not in L. and M. nor Rohe

⁺ for fque un et added L. and M. and Rob.

Of Attornement. Sect. 564, 565. Cap. 10.

(Siderf. 283. 4. Rep. 85. a.)

20. H. 6. (1. Rep. 101. b. 104. a. Doctor and Student 52. 2. 1. Roll. Abr. 419. Cro. Car. 1. 401. Dyer 4. a. Post. 367. a. Ant. 20, 47. b. 48. b. 2. Rep. 23. 4. Rep. 81. a. Ant. 42. 213. a. 217. b. 222. b. 229. a. 1. Roll. Abr. 303.)

farre as it may stand faire, &c. with the rule of law, it

debet legibus, non leges vices que le tenant doit the tenant ought to intentioni. And yet as

Quia intentio inservire vers maners des ser- ner of services which doe, &c.

is honourable for all judges to judge according to the intention of the parties, and so they ought to doe. And of this somewhat in this chapter hath beene said before.

Sect. 564.

48. E. 3. 24. 3. E. 3. quod TERE is to be objuris clamat. ferved, that this 4. E. 3. 28, 29. 37. H. 6. 14. per Moyle. 17. E. 3. 29. (Ant. 248. b. 6. Rep. 64. b.)

judgment in the scire facias (which is no more but that the demandant shall have execution, &c.) is a good attornement, albeit it is prefumed that judicium redditur in invitum, and that an attornement in law of any part is good for the whole. And this is the fifth example that Littleton putteth of an attornment in law.

Note, that in case of a deede nothing passeth before attornement, as hath becne faid. In the case of the fine, the thing granted passeth as to the

services, et le seignior kinde of services, and granta les services a un the lord grant the serauter per fine; si le vices to another by fine; grantee sua un scire if the grantee sue a facias hors del mesme le scire facias out of the fine pur ascun parcel de same fine forany parcell les services, et ad judge- of the services, and hath ment de recover, cel judgment to recover, judgement est bone at- thisjudgment is a good

ITEM, si soit seig- ALSO, if there bee nior et tenant, et le lord and tenant, tenant tient del seignior and the tenant holdeth per plusors maners des of the lord by many tornement en ley pur attornement in law for touts les services.* all the services.

state, but not to distraine, &c. without attornement. In the case of the king the thing granted doth passe both in estate and in privitie to distraine, &c. without attornement, unlesse it be of lands or tenements that are parcell of the dutchy of Lancaster, and lie out of the county palatine. (1)

(1. Roll. Abr. 294. Aut. 309. a.

(5. Rep. 123. Sect. 551.

2. Rep. 67. b. Sect. 579.

Cro. Car. 284.

(1. Sid. 139. 1. Lev. 28.)

Sect. 565.

ITEM, si le seignior d'un ALSO, if the lord of a rent ser-rent service graunta les ser- vice grant the services to vices un auter, et le tenant at- another, and the tenant attorne by a torna per un denier, et puis le penny, and aster the grantee disgrantee distraine pur le rent traine sor the rent behinde, and the arere, et le tenant a luy fait re/- tenant make rescous; in this case cous; en ceo cas le grauntee n'a- the grantee shall not have an assise vera assis del rent, forsque briefe for the rent, but a writ of rescouse, de rescous, pur ceo que le done because the giving of the penny del denier per le tenant + ne by the tenant was not but by way fuit forsque per voy d'attorne- of attornement, &c. But if the tement, &c. Mes si le tenant avoit nant had given to the grantee the done a le grauntee le dit denier said penny as parcell of the rent, come parcel de le rent, ou un or a halse penny or a farthing by maile ou un farthing per voy de way of seisin of the rent, then this

" &c. added in L. and M. and Roh.

A sernot in L. and M. nor Roh.

seisin del rent, donque ceo est et donques sur tiel rescous le grantee avera assise, &c.

is a good attornement, and also it bone attornement, et auxy est is a good seisin to the grantee of (Ant. 159 b. 160. a.)
bon seisin al grauntee del rent; the rent; and then upon such rescous the grantee shall have an alsise, &c.

TEREUPON is to be observed a diversitie betweene money given by way of attorne- 39. H. 6. 3. 26. 5. E. 4. 2. ment, and where it is given as parcell of the rent by way of scisin of the rent. For Vide Sect. 235.

albeit the rent be not due before the day, yet a payment of parcell of the rent before-hand 25. E. 3. 44. 49. E. 3. 15.

is an actual seisin of the rent to have an assise. And so it is if he give an oxe, a horse, a 37. H. 6. 39. 49. All. p. 6. sheepe, a knife, or any other valuable thing in name of seisin of the rent before-hand, this is 34. H. 6. 42. good. And therefore a payment in name of seisin is more beneficiall for the grantee, because that is both an actuall seisin and an attornement in law; and yet being given before the day in 7. H. 4. 2. tst. Attorney Br. 97. which the rent is due, it shall not be abated out of the rent. So as to give seisin of the rent, it is (6. Rep. 59) taken for part of the rent; but as to the payment of the rent it is accounted as no part of the (Ant. 281. a.) rent; and the reason of the diversitie is, for that remedies to come to rights or duties are ever taken favourably. Here also appeareth that there is an actuall seisin, or a seisin in deed of a rent, whereof (as Littleton here speaketh) an assise doth lie; and a seisin in law which the grantee hath by attornement before actuall possession. (1)

40. E. 3. 22. 28. H. 6. 6. b.

Sect. 566.

reo que le seigniory est tire, &c. entier, Ec.

JTEM, si sont plu- ALSO, if there bee fors jointenants many jointenants which hold by certaine services, et le taine services, and the seignior graunta a lord grant to another un auter les servi- the services, and one ces, et un de les join- of the joyntenants attenants attorna al torne to the grantee, grauntee, ceo est auxy this is as good as if all bon, sicome touts + had attorned, for that ussent attorne, pur the seigniory is en-

HERE is to be observ- (1. Roll. Abr. 302.) ed what manner of te- (2. Rep. 67.) nants shall attorne to the grant. And first, [b] if there [b] 39. H. 6. 3. 26. be two or more jointenants, Sec Tooker's case ubi supra, and and one of them attorne, it the authorities there cited. is sufficient: for, as it hath beene often faid, there cannot be an attornement in part. And albeit there is great authoritie against Littleton, yet the law hath beene adjudged according to Littleton's opinion, as it hath beene in other of his cases avhen they have come in question: and as it is of an attornement, so it is of a seisin; a seisin of a rent by

the hands of one joyntenant is good for all, and a seisin of part of the rent is a good seisin of (2. Roll.Abn 424. Ant. 297. b.) the whole.

[c] If either the grantor or the grantee die, the attornement is countermanded; but if the [c] Vid. Lib. 4. fol. 8. Lib. 6. nant die, he that hath his estate may attorne at any-time. If the tenant grant over his fol. 57. Lib. 9. fol 34 tenant die, he that hath his estate may attorne at any time. If the tenant grant over his cstate, his assignee may attorne.

[d] If an infant hath lands by purchase or by descent, he shall be compelled to attorne in a [d] 42. E. 3. Age 33. per quæ servitia, and no mischiese to the infant; for when he commeth to full age, he may disclaime to hold of him, or he may fay that he holds by leffer fervices: but there should be a greater mischiefe for the lord if the attornement of an infant should not be good, for he should lose his que servicio. fervices in the meane time.

If an infant be a lesse, he shall be compelled to attorne in a quid juris clamat. The attornement of an infant to a grant by deed is good, and shall binde him, because it is a lawfull act, albeit he be not upon that grant by deed compellable to attorne. Of baron and fem Littleton putteth many cases in this chapter.

[4] A man that is deafe and dumbe, and yet hath understanding, may attorne by signes: [4] 26. E. 3. 63. [f] but one that is not compos mentis cannot attorne, for he that hath no understanding cannot [f] 18. E. 3. 53. agree to the grant.

What conveyances shall be good without attornements more shall be faid in this chapter in dis proper place.

Vid. 4. H. 6. 29. 18. E. 4. 10. 26. E. 3. 62. 37. H. 8. tit. Attorne, Br. 26, E. 3, 62. 26. Aff. 27. 32. E. 3. tit. per 2. E. 2. Attorn. 78. 2. E. 2. ibid. 77. 18. H. 6. 2. Lib. 9. f. 84, 85. Conyc's cafe. 4. Mar. Dier 137.

21 E. 3. Age 85. 7. E. 2. Age 140.

Sect.

" que - et, L. and M. and Roh.

+ uffent attorne - attornerent, L. and M. and Roh.

⁽i) This is only to be understood of a rent at common law: but if the rent is limited, as an use under the statute; -- as if lands fare conveyed by leafe and releafe to A. and his heirs, to the use that B. may receive out of them an annual rent; - the statute immudiately executes the use of the sent in B. 7 1

Cap. 10. Of Attornement. Sect. 567, 568. Lib. 3.

Sect. 567.

reason, &c.

ITEM, si home lessa tenements ALSO, if a man letteth tenements a terme d'ans, per force de for terme of yeares, by force quel lease * le lessée est seisie, et of which lease the lessée is seipuis le lessor per son fait gran- sed, and after the lessor by his ta le reversion a auter pur terme deed grant the reversion to anode vie, ou en taile, ou en fee; il ther for terme of life, or in taile, covient en tiel case que le tenant or in see; it behoveth in such a terme d'ans attorna, ou auter- case that the tenant for yeares atment rien passera a tiel grauntee torne, or otherwise nothing shall per tiel fait. Et si en cest case le passe to such grantee by such deed. tenant a terme d'ans attorna al And if in this case the tenaunt for grantee, donque maintenant pas- yeares attorne to the grantee, then sera le franketenement al graun- the freehold shall presently passe tee per tiel atturnement sauns to the grantee by such attornement ascun liverie de seisin, &c. pur without any liverie of seisin, &c. ceo que si ascun liverie de seisin, † because if any liverie of seisin, &c. &c. serra ou besoigne d'estre should be or were needfull to bee fait en cel case, donque le tenant made, then the tenant for yeares a terme d'ans serroit al temps de should be at the time of the livery liverie de seisin ouste de son post- of seisin ousted of his possession, session, I le quel serroit encounter which should bee against reason, &c.

TERE Littleton having spoken of grants of seigniories and rent charges, and rents fecke issuing out of land, here treateth of a grant of a reversion of land upon an estate for yeares; seeing this grant of the reversion must be by deed, and the agreement of the lesse for yeares requisite thereunto, the freehold and inheritance doe passe thereby, as well as by liverie of seisin, if it were in possession: and the grant of the reversion by deed with the attornement of the lessec, doe countervaile in law a fcoffinent by liverie, as to the passing of the freehold and inheritance.

(Ante 113. a. 181. b.)

*

A terme d'ans [g] And yet a tenant by statute merchant, or tenant by statute staple, [g] 6. E. 3. 53. 25. E. 3. 53. A terme d'ans [g] And yet a tenant by statute merchant, or tenant by statute staple, Brook. tit. Attorn. 48. 32. E. 3. or by elegit, must also attorne; for the grantee may have a venire facias ad computandum, or Scir. fac. 101. Dy. 1. 2. tender the money. &c. and discharge the land; and if the reversion be granted by sine, they tender the money, &c. and discharge the land; and if the reversion be granted by fine, they shall be compelled to attorne in a quid juris clamat.

And so the executors that have the land until the debts bee paid must attorne upon the grant of the reversion, although they have not any certaine terme for yeares.

Sect. 568.

tenant de la terre at- done en le taile, savant reversion, &c. if hee in

HERE Littleton speaketh of a reversion expectant upon an estate for life, or a gift in taile.

If a un home pur for terme of life, or gill covient que le terme de vie, ou ven in taile, saving the

* le lesse not in L. and M. nor Rohe

† &c. not in L. and M. nor Roh.

le quel-que, L. and M. and Roh.

est voyd. *

Ie reversion, &c. si ce- the reversion in such huy en le reversion en case grant the revertiel case granta le re- sion to another by his version a un auter per deed, it behooveth son fait, il covient que that the tenant of the le tenaunt de la terre land attorne to the attourna al grantee grantee in the life of en la vie le grantor, the grantor, or otherouauterment legraunt wise the grant is voyd.

torne al grauntee, &c. Let us therefore speake first of tenant for life: and yet in some case albeit tenant for life hath granted over his eftate, yet he shall atturne. [a] [a] 10. H. 4. tit. Attorn. 16. As if tenant in dower or by the curteste grant over his or 38. E. 3. 23. 18. E. 3. 3. her estate, and the heire grant over the reversion, the tenant Walt. 122. in dower or by the curtefie may atturne, because at the time of the grant made they were attendant to the heire

11. H. 4. 18. 30. E. 3. 16. 41. E. 3. 18. Temps E. 1. tit.

in reversion, and the grantee (Ant. 54. a.)
cannot be tenant in dower, or tenant by the curtesse. And if the reversion be granted by F. N. B. 55. E. Regist. I. 72. fine, the fine must suppose that the tenant in dower or by the curtesic did hold the 4. E. 3. 26. land, albeit they had formerly granted over their estate, and albeit the reversion doth passe by the fine; yet the quid juris elamat must be brought against him that was tenant at the time of the note levied. But yet after the reversion is granted over, the grantee shall not have any action of waste against the tenant in dower or by the curtesie, but the action of wast must be (3. Rep. 23. b.) brought against their assignee, and not against themselves; for tenant by the curtesie or tenant in dower cannot hold of any but of the heire: and therefore in respect of the privitie, they shall attorne and be subject to an action of wast, as long as the reversion remaineth in the heire, albeit they have granted over their whole estate. And it is worthy of the observation, that if the grantee of the reversion doth bring an action of wast against the assignce of the tenant by the curtesie, [6] the pl. must rehearse the stat. which proveth that no prohibition of [6] Regist. 721 waste in that case lay at the common law, as it did if the heire had brought it against the tenant by the curtesie itselfe: and therefore some doe hold, that if the heire doe grant over the reversion, that the attornment of the assignee of the tenant by the curtesic, or of tenant in dower is sufficient, because they afterward must be attendant and subject to the action of waste.

If the reversion of lessee for life be granted, and lessee for life assigne over his estate, the les- 18. E. 4. 10. b. 26. E. 3. 62see cannot attorne; but the attornement of the assignee is good, because (as Littleson here saith) it behooveth that the tenant of the land doe attorne, and after the assignement there is no tenure or attendance, &c. betweene the lessee and him in reversion.

If lesse for life assigneth over his estate upon condition, he having nothing in him but a 5. H. 5. 10. condition shall not attorne; but the assignee may attorne, because he is tenant of the land.

ou auterment nemy.

IN mesme le ma- IN the same manner ner est, si terre soit isit, if land be granted † done en taile, ou lesse in taile, or let to a man aun home pur terme forterme of life, therede vie, le remainder a mainder to another in un auter ‡ en fee, sice- fee, if he in the remainluyenleremainder voile der will graunt this regranter cest remainder mainder to another, 'a un auter, &c. si le &c. if the tenant of the tenant de la terre at- land attorne in the life turnaen la viele gran- of the grantor, then tor, donques le grant the grant of such a redetielremainderest bon, mainder is good, or otherwise not.

L'Ittleton also speaketh here of an attornement by 12. E. 4.3, 4. 3. E. 4.11. tenant in taile; and true it 43. E. 3. 1. 46 E 3. 13. is that he may attorne; but (9. Rep. 85. b.) where the reverlion is granted by fine, hee is not compellable to attorn, because he hath an estate of inheritance (Ant. 27. b.) which may continue for ever.
And so it is of a tenant 5. 11. 5. in taile after possibilitie of (11. Rep. 79) issue extinct, he shall not be compelled to attorne for the 20. E. 3. quid juris clam. 50. inheritance which was once in him. [c] But if tenant in [c] See the chap, of tenant in taile after possibilitie of is taile after possibilitie of issue exsue extinct grant over his es- cited to be adjudged. tate, his affiguee flight be compelled to attorn, because he never had but a bare state for life.

But

of done en taile ou, not in L. and M. nor Rob.

t en fee, - Gre. L. and M.

Cap. 10. Of Attornement. Sect. 570, 571 Lib. 3.

But as to tenant in taile, note a diversitie betweene a qui i juris clamat, and a quem redditum reddit, or a per quæ servicia; for against a tenant in taile, no quid juris clamat lieth, as is aforesaid. But if a man make a gift in taile, the remainder in fee, and the seigniorie or rent charge issuing out of the land be granted by fine, the conusee shall maintaine a per quæ servicia, or a quem redditum, and compell him to attorne; for herein his estate of inheritance is no privilege to him, for that a tenant in fee simple (as his estate was at the common law) is also compellable in these cases to attorne.

Sect. 570.

* P. 12. E. 4. Et la est tenus P. 12. Edw. 4. It is there holper tout le court, que te- den by the whole court, that c'est assets bone.

nant en taile ne serra arct d'at- tenant in taile shall not be comturner, mes s'il atturna gratis, pelled to attorne, but if he will attorne gratis, it is good enough.

THIS is added to Littleton, and therefore though it be good law, and the booke truly cited, yet I passe it over.

Sect. 571.

fur tiel grant del reversion, &c. grant of the reversion, &c.

ITE M, si terre soit lesse a un ALSO, if land bee let to a man bome pur terme d'ans, le re- for years, the remainder to anmainder a un auter pur terme de other for life, reserving to the lesvie, reservant al lessour un cer- sor a certaine rent by the yeare, and taine rent per an, et liverie de sei- liverie of seisin upon this is made sin sur ceo est fait al tenant pur to the tenant for yeares; if hee in terme d'ans; si cestuy en le rever- the reversion in this case grant the sion en cest case granta le reversion reversion to another, &c. and a un auter, + &c. et le tenant the tenant which is in the reque est en le remainder apres le mainder after the terme of yeares terme d'ans ‡ soy attourna, ceo est attorne, this is a good attornebone attournement, et celuy a ment, and hee to whom this que cest reversion est graunt, per reversion is granted, by force of force de tiel attournement dis-such attornement shall distreine treynera le tenant a terme d'ans the tenant for yeares for the rent pur le rent due apres tiel attorn- due after such attornement, albeit ment, coment que le tenant a terme that the tenant for yeares did never d'ans ne unques attournast a luy. attorne unto him. And the cause is, Et la cause est, pur ceo que lou le for that where the reversion is dereversion est dependant sur l'estate pending upon an estate of freehold, del franktenement, suffist que le it sufficeth that the tenant of the tenant del frunktenement attourna freehold doe attorne upon such a

SUffift que le tenant del franktenement attorna (1). Note, Littleton saith not here, that the tenant of the franktenement ought in this case to attorne, but that

411. Rep. 79.)

12. E. 4. 3, 4.

^{*} This paragraph not in L. and M. nor Roh.

中 &c. not in L. and M. nor Roh.

[‡] foy not in L. and M. nor Roh.

⁽¹⁾ Two reasons are given for this. One is, that the possession of the tenant for years, is the possession of the immediate seecholder. See Brediman's case, 6. Rep. 56. b. The other reason is, that as the termor for years holds of the reversioner, and pays the services to him, so the tenant for life holds also of him. -- Thus, as both hold estates of the reversioner, either of them may attorn.

it sussiceth that he doth attorne. And I heard sir James Dier chiefe justice of the common pleas hold, that in this case if the tenant for yeares did attorne, it would vest the reversion; for seeing the estate for yeares is able to support the estate for life, he shall binde him in the remainder by his attornement in respect of his estate and privitie.

Paschi 15: Eliz. in Brasbritche's case, in Communi Banco.

Sect. 572.

tee, ceo serra forsque un rent rent secke, &c. Secke, &c.

T est ascavoir, que lou AND it is to be understood, that (Ant. 143. a. 150. b. 247. a. un leas a terme d'ans ou where a lease for yeares or for (2. Roll. Abr. 60. 424.) a terme de vie, ou done en life, or a gift in taile, is made to any taile, est fait a ascun home, re- man, reserving to such lessor or doservant a tiel lessor ou donor nor a certaine rent, &c. if such un certaine rent, &c. si tiel lessor lessor or donor grant his reversion ou donor graunta son reversion to another, and the tenant of the a un auter, et le tenant del terre land attorne, the rent passeth to the attourna, le rent passa al graun-grantee, although that in the deed tee, coment que en le fait del grant of the grant of the reversion no de reversion nul mention soit fait mention be made of the rent, for de le rent, pur ceo que le rent est that the rent is incident to the reincident al reversion en tiel case, version in such case, and not è conet nemy è converso, &c. Car si verso, &c. For if a man will grant home voile graunter le rent en the rent in such case to another, retiel case a un auter, reservant a serving to him the reversion of the luy le reversion del terre, coment land, albeit the tenant attorne to que le tenant attorna a le graun- the grantee, this shall bee but a

Of this Littleton hath spoken before in the chapter of Rents.

Sect. 573.

ITEM, si home lessa terre a un auter pur terme de sa vie, et puis for his life, and after hee con-

il confirma per son fait l'estate firme by his deed the estate of the del tenant a terme de vie, le re- tenant for life, the remaynder to mainder a un auter en fee, et le te- another in fee, and the tenant fot nant a terme de vie accepta le fait, life accepteth the deed, then is donques est le remainder en fait en the remaynder in fait in him to celuy a que le remainder est done whom the remaynder is given or ou limitte per mesme le fait. ** Car limited by the same deed. For per l'acceptance del tenantaterme by the acceptance of the tenant for de vie + de le fait, ceo est un agree- life of the deed, this is an agreement de luy, et issint un attorne- ment of him, and so an attornement en ley. Mes uncore celuy ment in law. But yet hee in the en le remainder n'avera ascun ac- remaynder shall not have any action

t1012

^{*} Car not in L. and M. nor Roh.

case, &c.

tion de waste ne auter benefit of waste nor other benefit by such per tiel remainder, si non que il remaynder, unlesse that hee hath avoit le dit fait en poigne, per que the said deed in hand, whereby the le remainder fuit taile ou graunt remaynder was entayled or granted a luy. Et pur ceo que en tiel cas to him. And because that in such le tenant a terme de vie voile per cas case the tenant for life peradven-*reteigner le fait a luy, a cel entent, ture will retaine the deed to him. que celuy en le remainder n'ave- to this intent, that he in the reroit ascun action de waste envers maynder should not have any acluy, pur ceo que il ne poit vener tion of waste against him, for that d'aver le fait en sa possession, it il hee cannot come to have the deed serra bone ‡ et sure chose en tiel cas in his possession, it will be a good pur celuy en le remainder, que and sure thing in such case for him un fait endent soit fait per celuy in the remaynder, that a deed inque voile faire tiel confirmation, dented bee made by him which et le remaynder ouster, &c. et que will make such confirmation, and celuy que fait tiel confirmation the remaynder over, &c. and that delivera un part del indenture hee which maketh such confirmaal tenant a terme de vie, et le au- tion deliver one part of the indenter part a celuy que avera le re- ture to the tenant for life, and the mainder. Et donque il per mon- other part to him that shall have ftrance de le part del endenture the remaynder. And then he by poit aver action de wast envers shewing of that part of the inle tenant a terme de vie, et touts denture may have an action of auters advantages que celuy en waste against the tenant for life, le remainder poit aver en tiel and all other advantages that he in the remainder may have in such a case, &c.

(1. Roll. Abr. 301.) Vid. Scct. 325. 575. Vide Pl. Com. in Colthirst's cafe. Dock and Stud. cap. 20. fol. 93, 94. 8. R. 2. in waste, in livre

17. E. 3. Confirmat. 4. 35. H. 6. fol. 8. 14. H. 8. Pl. Com. 149. in Throckmorton's calc.

45. E. g. 14, 15. 11. H. 4. 39. 14. H. 4. 31. (Ant. 10. a.)

HERE Littleton putteth a case of a remainder whereunto an attornement is requisite. And this is the fixth example of an attornement in law.

Remaynder a un auter, &c. Of this sufficient hath beene said in the chapter of Confirmation, Sect. 525.

Si non que il avoit le fait en poigne. And albeit he hath no remedy to come to the deed during the life of tenant for life, yet because he is privie in estate, he shall not maintaine an action of waste without shewing the deed; but when the remainder is once executed, he shall not need to show the deed.

Il serra bone et sure chose, &c. Hereby it appeareth how necessary it is to use learned advice in a man's conveyance, for thereby shall be prevented many questions, and not to follow the advice of him that is experimented only. For as in physicke, Nullum medicamentum est idem omnibus, so in law one forme or president of conveyance will not sit all cases.

Sect.

Sect. 574.

ITEM, si deux ALSO, if two joynjoyntenants sont, tenants be, who
les queux lessont lour let their land to anoles queux lessont let les queux l terme de vie et eux sion. en le reversion.

attorne.

terre a un auter pur ther for terme of life, terme de vie, ren- rendring to them and dant a eux et a lour to their heires a cerheires certaine rent taine yearely rent; in per an; en cest case this case if one of the si un des joyntenants joyntenants in the reen le reversion re- version release to the lessa a l'auter joyn- other joyntenant in tenant en mesine le the same reversion, this reversion, cest re- release is good, and he leas est bone, et ce- to whom the release is luy a que le releas made shall have only est fait avera solement the rent of the tenant le rent del tenant a for life, and shall only terme de vie, et avera have a writ of waste solement un briefe de against him, although waste envers luy, co- hee never attorned by ment que il ne unques force of such release, attorneroit per force &c. And the reason is, de tiel releas,* &c. Et for the privitie which la cause est, pur le pri- once was betweene vity que un foits fuit the tenant for life perenter le tenant a and them in the rever-

joyntenants, and one of them releaseth to one of the

other.

It is true, that there is a difference betweene these releases; for the release in the one cale maketh no degree, but hee to whom the release is made is supposed in from the first feoffor; and in the other (Ant. 238.) it worketh a degree, and hee to whom the release is made is in the per by him; yet in neither of these cases there is requisite any attornement, for both of them are within Littleton's reason (for the privitie, &c.)

Pur le privitie, &c. For if one joyntenant make a 2. Eliz. Dier. 176. lease for yeares, reserving a (Ant. 185. a.) rent, and dieth, the furvivor shall not have the rent; and therefore Littleton here addeth materially, for the privitie that was betweene the tenant for life and them in the reversion.

And here it is good to be feene what grantors or others that make conveyances, &c. are fuch as their grants or conveyances are either good without attornement, or where the tenant is no way 45. E. 3. 6. h. 13. Eliz.

compellable to attorn. Tenant Dier. 188. Lib. 3. fol. 86. for life shall not be compelled to attorne in a quid juris clamat upon a grant of a reversion by justice Windham's case.

rule, that when the grant by fine is defeasible, there the tenant shall not be compelled to 36. H. 6. 24.

(1. Roll. Abr. 297.)

therefore the tenant shall not be compelled to attorne. So if the land be holden in ancient demesne, and he in the reversion levieth a fine of the 5. E. 3. 25. 31. E. 3. antient reversion at the common law, the tenant shall not be compellable to attorne, because the demesse is.

As if an infant levie a fine, this is defeasible by writ of error during his minoritie, and

fine holden of the king in chiefe without licence; but the reason hereof is not because the te-

nant for life might be charged with the fine, for his estate was more ancient than the fine

levied, but because the court will not suffer a prejudice to the king, and the king may seife

the reversion and rent, and so the tenant shall be attendant to another. Also it is a generall

cstate that passed is reversible in a writ of deceit.

So if tenant in taile had levied a fine, the tenant should not be compelled to attorne, because it was descasible by the issue in taile.

But now the statutes of 4. H. 7. and 32. II. 8. having given a further strength to fines to barre the issue in taile, the reason of the common law being taken away, the tenant in this case shall be compelled to attorne, as it was adjudged (*) in justice Windhum's case.

If an alienation be in mortmaine, the tenant shall not be compelled to attorne, because the Windham's case. lord paramount may defeat it.

24. E. 3. 25. b. 37. H. 6. 33. 48. E. 3. 23.

(*) Lib. 3. fol. 86. juffice 17. E. 3. 7. 20. E. 3. 18.

Sect.

Sect. 575.

(1. Roll. Abr. 301.)

cun attornement de luy, &c. ment of him, &c.

EN mesme le maner, et pur IN the same manner, and for mesmë la cause, est, lou home the same cause, is it, where a lessa terre a un auter pur terme man letteth land to another for de vie, le remainder a un auter life, the remainder to another for pur terme de vie, reservant le life, teserving the reversion to the reversion al * lessour; en cest cas si lessor; in this case if hee in the receluy en le reversion relessa a ce- version releaseth to him in the reluy en le remainder et a ses heires mainder and to his heires all his tout son droit, &c. donques celuy right, &c. then he in the remainen le remainder ad un fee, &c. et der hath a fee, &c. and hee shall il avera un briefe de wast envers have a writ of wast against the le tenant a terme de vie sans as- tenant forlise without any attorne-

Vide Sect. 549. 553. 556.

This needeth no explication.

Sect. 576.

(6. Rep. 69. 2.)

46. E. 3. 30. b. 2. H. 5. 4. 5. H. 5. 12. 34. H. 6. 6. 18. E. 3. 47. 9. H. 6. 10.

(5. Rep. 113. b.)

[e] Brasbritche's cale. P. 15. Eliz. deane of Paul's cafe, go. Eliz.

examples, that Littleton putteth of an attornement in law, and here he putteth two cases also of a notice in law. And the reason of both these are here rendred by Littleten. First for the notice, Littleton faith that the lesse shall not by law be misconusant ment is, because the whole fee simple passeth by the fcoffment, and the leffee by his regreffe leaveth the reversion in the feoffee, which (faith Littleton) is a good attornement. The fame law it is of a tenant by statute merchant or staple, or elegit. And fo it is of a lease for life, as Littleton here faith; and so it was resolved [e] in Brasbritche's case, and after in the deane of

THERE have been now in all seven examples, that Littlea un auter pur terme to another for terme of des ans, et puis il yeares, and after he oust ousta son termour, et his termor, and thereof ent enfeoffa un auter enfeosse another in fee, en see, et puis le tenant and after the tenant sor a terme d'ans enter sur yeares enter upon the le feoffee, en claimant feoffee, clayming his of the feofiments that son terme, &c. et puis term, &c. and after doth the same land. And the fait wast; en cest case le waste; in this case the reason of the attorne- feoffee avera per la ley feoffee shall have by un briefe de wast en- law a writ of waste avers luy, et uncore il gainst him, and yet hec n'attornast pas † a luy. did not attorne unto Et la cause est, come him. And the cause is, jeo suppose, pur ceo que as I suppose, for that he celuy que ad droit de which hath right to aver terres ou tene- have lands or tenements ments pur terme d'ans, for yeares, or otherwise, ‡ ou auterment, ne ser- should not by law bec roit per la ley misco- misconusant of the feosfnusant de les seeff- ments which were made Paul's his case in the ments que sueront saits of and upon the same

per le fait le tenant a scilicet, by his entrie, &cc. terme d'ans, scilicet, per son entrie, &c.

de et sur mesmes les lands, &c. And inasmuch terres, &c. Et entant as by such feoffment the que per tiel feoffment tenant for yeares was le tenant a terme d'ans put out of his possession, fuit * mis hors de son and by his entrie he caupossession, et per son entre sed the reversion to bee il causast le reversion to him to whom the d'estre a celuy a que le feoffment was made, ver in an assis, this feoffment fuit fait, ceo this is a good attorneest bon attornement; ment; for he to whom car celuy a que le feoff- the feoffment was made, ment fuit fait, avoit had no reversion before nul reversion devaunt, the tenant for years had que le tenant a terme entred upon him, for d'ans avoit enter sur that he was in possession luy, pur ceo que il fuit in his demesne as of + en possession en son de- fee, and by the entrie of mesne come de see, et the tenant for yeares, pur l'entrie del tenant a hee hath but a reversion, terme d'ans il y adfors- which is by the act of queunreversion, quelest the tenant for yeares,

Sect. 577.

tournement, causa quâ quâ supra, Ec. (1)

MESME la ley est, THE same law is, as come il semble, it seemeth, where a lou un leas est fait lease is made for life, pur terme de vie, savant saving the reversion to le reversion al lessour, the lessor, if the lessor si le lessour disseisit le disseise the lessee, and lesse, et fait feoffment. make a feoffment in fee, en fee, si le tenant a if the tenant for life enterme de vie enter et ter and make waste, the fait wast, le seoffee a- feoffee shall have a writ vera briefe de waste of waste without any Jans ascun auter at- other attornement, causa

fupra, &c. If a man make a lease for life, and then grant the reversion for life, and the lessee attorne, [6. Rep. 69. Mo. 99. Ant. 266.a.) and after the lessor disselfe the lessee for life, and make a feossment in fee, and the lessee reenter, this shall leave a reversion in the grantee for life, and another reversion in the feossee, and yet this is no attornement in law of the grantee for life, because he doth no act, nor assent to any which might amount to an attornement in law. Et res inter alies affa alteri necere, non debet. Neither hath the grantee for life the land in possession, so as he may well be misconusant of the feoffment made upon the land, and so out of the reason of Littleton. But (2. Rep. 671.)

yet the revertion in tee doth paffe to the feoffee.

common place. But (34. H. 6. 7.) shall the lessee in this case whether hee will or no doe an act that amounts to an attornement, viz. by his regreife, or elfe lose the profit of his land? And fome doe hold, that in that case if the lesse for life doe recocause hee comes to it by courfe of law, and not by his voluntary act. And yet in that case, as in the case of the fine, the' state of the reversion is in the feoffee. [f] But [f] 18, E. 3. 48. b. others doe hold it all one Lib. 6. fol. 60. b. in case of a recovery, and Sir Moyle Finche's case. a regresse.

[g] If the lessor dis- [g] 9. II. 6. 16. Deane of seise tenant for life or Paul's case, ubi supra. ouste tenant for yeares, (Poll. 321. b.) and maketh a feoffment in fee, by this the rent referved upon the leafe for life or yeares is not extinguished, but by the regresse of the lessee the rent is revived, because it is incident to the reversion: and so hath it (6. Rep. 70. a.) beene adjudged. But if a man be seised of a rent in fee, and disselfe the tenant of the land, and make a feoffment in fee, the tenant re-entreth, this rent is not revived. And so note a diversitie between a rent incident to

incident to a reversion. If two joynt leffees for yeares or for life be (Ant. 297. b. 2. Rep. 67. a.) ousted or disseised by the leffor, and he enteoffe another, if one of the lesfees re-enter, this is a good attornement, and fhall binde both; for an attornement in law is as strong as an attorne-

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Sect.

[&]quot; Mis hors de son possession, et per son entrie il causa le reversion d'estre a celuy a que le scossment suit, not in L. and M. nor Roh. + en poffiffion-Scife, L. and M. and Roll.

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* leffour-luy, L. and M. and Roh.

† a lay not in L. and M. nor Roh.

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Sect.

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Sect. 578.

(t. Rep. 66)

(Ant. 54. b.)

(1. Roll. Abr. 627.)

Vid. Sect. 194. 273.

HERE it appeareth, that where the ancestor taketh an estate of freehold, and after a remainder is li-(Ant. 13 b. 1. Roll. Abr. 127.) mited to his right heires, that the fee simple vesteth in himselfe, as well as if it had beene limited to him and his heires; for his right heires are in this case words of limitation of estate, and not of purchase. Otherwise it is where the ancestor taketh but leafe for yeares be made to A. the remainder to B. in tayle, the remainder to the right heires of A. there the remainder vesteth not in A. but the right A. die during the estate taile: tor as the ancestor and the and executor, or the intestate and administrator of chattels. And so it is if A. make a fcoffment in fee to the use of B for life, and after to the use of C. for life or in taile, songrant demesne, Ec. grant, &c.

tenant passa per le deede without

ITEM, si leas soit ALSO, if a lease be fait pur terme de made for life, the vie, le remainder a un remainder to another auter en le taile, le intaile, the remainder remainder ouster a les overtothe right heires droit heires le tenant of the tenant for life; a terme de vie; en in this case, if the tecest case, si le tenant a nant for life grant his terme de vie granta remainder in fee to an estate for yeares: as if a son remainder en see another by his deede, a auter per son fait, this remainder maincel remainder main- tenant passeth by the heires shall take by purchase if fait sans ascun at- attornement, &c. for tournment, * &c. car that if any ought to heire are correlativa of inhe- si ascun doit attorne en attourne in this case, ritances, so are the testator cest case, ceo serroit it should be the tenant le tenant a terme de for life, and in vaine vie, et en vain serroit it were that he should que il atturneroit sur attorne-upon his owne

and after to the use of the right heires of B. B. hath the see sumple in him, as well when it is

by way of limitation of use, as when it is by act executed. (1) En vaine serroit, &c. Quod vanum et inutile est lex non requirit. Lex est ratiosumma, quæ jubet quæ sunt utilia et necessaria, et contraria probibet; and arguments drawne from hence are forcible in law.

Sect. 579.

seignior per certaine rent, et ser- of the lord by certaine rent, and vice de chivaler, si le seignior gran- knights service, if the lord grant ta les services de son tenant per fine, the services of his tenant by fine, les services sont maintenant en the services are presently in the le grantee per force del fine; mes grantee by force of the fine; but uncore le seignior ne poet pas di- yet the lord may not distreine for streyne per ascun parcel de les ser- any parcell of the services, withvices sans attournment: mes si out attornement: but if the te-le tenant devia (son beire deins nant dieth, his heire within age,

ITEM, si soit seignior et te- ALSO, if there be lord and te-nant, et le tenant tient del nant, and the tenant holdeth age) le seignior avera le gard del the lord shall have the wardship

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

⁽¹⁾ The observation of Mr. Douglas upon this point (note to page 506 of his Reports) deserves the reader's most serious attention.

corps del heire, et de ses terres, of the bodie of the heire, and of voy d'escheat.

&c. coment que il ne unque attur- his lands, &c. albeit he never attornast, pur ceo que le seigniorie ned, because that the seigniorie fuit en le grantee maintenant per was in the grantee presently by force del sine. Et auxy en tiel cas, force of the fine. And also in such si le tenant morust sans heire, le case, if the tenant die without seignior avera les tenements per heire, the lord shall have the tenancie by way of escheat.

TIERE Littleton beginneth to shew what advantages the conusee of a sine may take before attornement, and what not.

[b] First, he cannot distreyne, because an avowrie is in lieu of an action; and thereupon [b] 8. E. 3.44. 26. E. 3.63. privitie is requisite. So likewise, and for the same cause, he can have no action of waste, 10. H. 6. 16. 34. H. 6. 7. nor writ of entrie, ad communem legem, or in consimili casii, or in casii proviso, writ of customes and services, nor writ of ward, &c. (1)

But if a man make a lease for yeares, and grant the reversion by fine, if the lessee be outled, (F. N. B. 60. Sect. 564. and the conusee disseised, the conusee, without attornement, shall maintaine an assise; for 4. Inst. 209, 210.) this writ is maintained against a stranger, where there needeth no privitie. And such things as the lord may seife, or enter into without suing any action, there the conusee, before any attornement, may take benefit thereof; as to seife a ward or heriot; or to enter into the lands or tenements of a ward; or escheated to him; or to enter for an alienation of tenant for life or yeares; or of tenant by statute merchant, staple, or elegit, to his disherison.

12. E. 4. 4. 40. E. 3. 7. 5. H. 5. 12. 48. E. 3. 15. b. 3, E. 2. droit. 33.

Sect. 580,581,582.

EN mesme le man- IN the same manner ment, Ec.

Sect. 581.

son disheritance.

ner est, si home it is, if a man graunt granta le reversion the reversion of his de son tenant a terme tenant for life to anode vie a un auter ther by fine, the reverper sine, le reversion sion maintenant paspassa maintenant al seth to the grantee by grantee per force del force of the fine, but sine, mes le grantee the grantee shall ne-' jammes n'avera action ver have an action of de wast sans atturn- wast without attornment, &c.

MES uncore si le BUT yet if the tenant tenant a terme for life alieneth de vie alienast en see, in see, the grantee le grantee poet enter, may enter, &c. because * &c. pur ceo que the reversion was in le reversion suit en luy him by force of the per force del fine, et fine, and such alienatiel alienation fuit a tion was to his ditheritance.

T is said in our books, 40. E. 3. 7. 48. E. 3. 5. that if tenaunt for life 48. E. 3. 32. 45. E. 3. 6. have a privilege not to be 21. E 3. 48. 24. E. 3. 32. impeachable of waste, or any (3. Rep. 86. 11. Rep. 79. other privilege, if he doth 1. Roll. Abr. 412. 296. attorne without faving his Ant. 274. b.) privilege, that hee hath lost it; which is fo to be understood, where he attornes in a quid juris clamat brought by the convice of a fine, that if he claimeth not his privilege, but attorne generally, his privilege is lost, for that the writ supposeth him to be but a bare tonant for life; and by his generall attornement, according to the writ, he is barred for ever to claime any privilege but a bare ettate for life. But if upon a grant of the reversion by deed, the tenant for life doth attorne, he loseth no privilege; for there can be no conclusion or barre by the attornement in pails: and so it is of an attornement in law. As if the lessor disseise the lessee for life, and make a feoffement in fee, and the leffee re-enter; this is an attornement in law, which shall not prejudice him

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

⁽¹⁾ The diffinction in these cases seems to be, that the grantee is intitled, before attornement, to what the lord may selzes, but not to any thing which lies in action-

of any privilege: so it is if the

lessor levie a fine of the re-

(3. Rep. 39. b.)

(Ant. 157. b.)

[b] 43. E. 3. 5.

(6. Rep. 4. 2. -9. Rep. 85. b.)

45. E. 3. tt. a. Vet. N. B. in per quæ servicia. 3. E. 3. Melne 56. & per quæ fervicia 16. 37. H. 6. 33. 39. H. 6. 25. 18. E. 4. 7. (7. Rep. 4. b.)

Vid. Sect. 557.

tenant.

Sect. 582.

version, and the conusee die without heire, whereby the reversion escheateth, in this case the law doth supply an attornment, and therefore the lesse shall lose no privilege. But in the quid juris clamat, if the leffee shew his estate ready, saving to him his privilege, &c. to attorne, hereby either his privilege shall bee or he shall not be compelled to attorne: [b] and if the plaintife be within age, so as hee cannot acknowledge the privilege, the tenant shall not be compelled to attorne untill his full age, when he may acknowledge it. But otherwife it is (as some hold) if a quid juris elamat be brought by baron and feme, the privilege shall be entred into the rolle, notwithstanding shee is a feme covert. And it a per quæ servicia brought by the conuce of the mesne; the tenant may shew that he held by homage auncestrell, and faving to him his warrantie and acquitall, he is readie to attorne. In the fame manner, if the tenant hath any other acquitall, and the mesne levie a sine to one for life, the remainder to another in fee, the tenant for life bringeth a per quæ servicia, and the tenant is ready to attorne, faving his acquitall, and the plaintife acknowledgeth it, and thereupon the tenant attorne, tenant for life dieth; in this case albeit regularly the attornement to the tenant for life is an atmainder, yet in this case hee in the remainder shall not diftreine, till he hath acknowmust be in a per quæ servicie, diversitatem §. brought by him against the

MES en * ceo cas BUT in this case lou le seignior where the lord granta les services de granteth the services son tenant per sine, of his tenant by fine, and his privilege, and is si tenant devie (son if the tenant die (his heire esteant de plein heire being of ful age) age) le grantee per le the grantee by the fine allowed and entred of record, fine n'avera reliefe, shall not have reliefe, ne unques distreynera nor shal ever distreine pur reliefe, sinon que for reliefe, unlesse that il † avoit l'attorne- hee hath the attornement del tenaunt que ment of the tenant morust: ‡ car de tiel that dieth: for of such chose que gist en dis- a thing which lieth in tresse, sur que le breve distresse, whereupon de replevin est sue, &c. the writ of replevin is home doit et covient sued, &c. a man must d'avorver le prisel bone and ought to avow the et droiturel, &c. et la taking good and rightcovient estre attorne- ful,&c. and there there ment del tenant, co- ought to be an attornment que le graunt ment of the tenant, alde tiel chose soit per though the graunt of sine: mes d'aver le such a thing be by fine: gard de les terres ou but to have the wardtenements issent tenus ship of the lands or tedurant le nonage le nements so holden durbeire, ou de eux aver ing the nonage of the per voy d'escheat, la heire, or to have them ne besoigne ascun dis- by way of escheat, there tresse, &c. mes un needs no distresse, &c. entrie en la terre, per but an entrie into the tornement to him in the re- force de le droit del land by force of the seigniory que le gran- right of the seigniorie, tee ad per force del which the grauntee ledged the acquitall, which fine, &c. Sic vide hath by force of the fine, &cc. Sic vide diversitatem, &c.

Allien en see, &c. Of this sussicient hath beene said in the next precedent Section. N'avera reliefe, &c. Of this sussicient hath beene said in the next precedent Section. Sect.

I & c. added L. and * ceo not in L. and M. nor Roh. + avoit l'attornement-fusoit attournement, L. and M. and Roh. § &c. added L. and M. and Reh. M. and Roh.

Sect. 583.

fuit seignior paramont poit distreiner le tenant, nient obstant que le ténant ne unques atturvertue de son seigniorie parament que le tenant ne unques atturna pas.

ITEM, si soit seignior, mesne et tenant, et le mesne graunta and tenant, and the mesne per fine les services de son tenant grant by fine the services of his a un auter en fee, et puis le gran- tenant to another in fee, and after tee morust sans heire, ore les ser- the grantec die without heire, now vices del mesnaltie deviendront the services of the mesnaltie shall et escheate al seignior paramont come and escheate to the lord pa-per voy d'escheat; ** et si apres ramont by way of escheat; and les services del mesnaltie sont if afterwards the services of the aderere, en cest cas celuy que mesnaltie bee behind, in this case hee which was lord paramont may distreine the tenant, notwithstanding that the tenant did never nast: et le cause est, pur ceo que le attorne: and the cause is, for that mesnaltie fuit en fait en le gran- the mesnaltie was in deed in the tee per force de le † dit fine, et le grantee by force of the said fine, feignior paramont puissoit a- and the lord paramont may avow vower sur le grantee, pur ceo upon the grantee, because in deed que il fuit son tenant en fait, co- hee was his tenant, albeit hee shall ment que il ne serroit a ceo com- not be compelled to this, &c. But pelle, &c. Mes si le grantor if the grantor in this case had died en cest case deviast sans heire en without heire in the life of the la vie le grantee, donque il serroit grantee, then he should bee comcompelle d'avower sur le grantee; pelled to avow upon the grantee; et auxy entant que le seigniour and also in as much the lord paraparamont ne claime le mesnal- mont doth not claime the mesnaltie per force del graunt fait per tie by force of the grant made by sine levie per le mesne, ‡ mes per sine levied by the mesne, but by vertue of his seigniorie paramont, ficilicet, per voy d'escheat, mont, viz. by way of escheat, he il avorva sur le tenant pur les ser- shall avow upon the tenant for the wices que le mesne avoit, &c. co- services which the mesne had, &c. albeit that the tenant did never attorne.

ERE Littleton putteth the case where one that claimeth under a conusce by fine may 45. 2. 3. 2. 34. H. 6. 7. distraine or maintaine any action, albeit there was never any attornement made to the 37. H. 6. 38. 39. H. 6. 32. 5. H. 7. 18. per Curiam.

And here is a diversitie betweene an act in law that giveth one inheritance in lieu of ano- Lib. 6. fol. 68. Sir Moyle ther, and an act in law that conveyeth the estate of the conusee only. Of the former Lit- Fuche's case. throw here putteth an example of the escheat of the mesnaltie which drowneth the seignioric paramont; and therefore reason would that the lord by this act in law should have as much benefit of the methaltic escheated, as he had of the seigniorie that is drowned; and the xather for that the law caffeth it upon him, and hee hath no remedy to compell the tenant to attorne.

* ct not in L. and M. nor Roh. Il fictions, not in L. and M. nor Roll.

+ dit not in L. and M. nor Roh.

I &c. added L. and M. and Roh,

Sect. 584, 585. Of Attornement.

[c] Temps E. 2. Attorn. 18. 39. H. 6. 38. per Prisot.

(Ant. 104. b. 309. b.)

(5. Rep. 113.)

Sir Moyle Finche's case, ubi subra.

attorne. Another reason hereof Littleton here yeeldeth, because the lord commeth to the mesnaltie by a seigniorie paramont, and therefore there needeth no attornement. [c] As if lesfee for life be of a mannor, and he surrender his estate to the lessor, there needeth no attornement of the tenant's, because the lessor is in by a title paramount. But if the conusee dieth, and the law casteth his seigniorie upon his heire by descent, he shall not be in any better estate than his ancestor was, because he claimeth as heire mecrely by the conusee.

So it is (as hath beene said) if the conusec of a fine before attornement bargaineth and selleth the seigniorie by deed indented and inrolled, the bargainee shall not distraine, because the bargainor, from whom the seigniorie moveth, had never actuall possession.

So and for the same reason if a reversion be granted by fine, and the conusee before attornement disseise the tenant for life and make a fcoffincht in fee, and the lessee re-enter, the feoffee shall not distraine.

(Ant. 104. b.)

[d] 45. F. 3. 2. 34. H. 6. 7. 5. H. 7. 18. per curiam. 13. H. 4. avowrie 237.

(4. Rep. 64. 1. Roll. Abr. 293. Ant. 153. a.)

Lib. 6. fol. 68. in Sir Moyle Finche's cafe. (Mo. 92. 68.)

27. H. 8. cap. 40.

(Ant. 309. 2. Cro. 193. 5. Rep. 113. 1. 6. Rep. 68. b. 10. Rep. 45.)

expresseth two diversities. First, beand the grant of the party. This case is put of an [d] escheat. which is a meere act in law, but so it is when it is partly by act in law, the party; as if the conioric or rent, hee finall distraine without man make a leafe for life or yeares, and after levie a fine to A. to the use of B. and his heires, B. Mail distraine and have an action of waste, albeit the conusee never had any attornement, because the reversion is vested in him by force of the statute, and hath no remedy to compell the lessee to attorne.

And so it is of a bar-

gaine and fale by deed indented and involled. but this is by force of a statute since Littleton wrote.

nement.

EN mesme le ma- IN the same manner it ner est, sou se re- is, where the reversion tweene an act in law, version d'un tenant a of a tenant for lise is terme de vie soit grant granted by fine to anoper fine a un auter en ther in fee, and the fee, et le grantee apres grantee afterwards dieth morust sans heire, are without heire, now the and partly by the act of le seignior ad le re- lord hath the reversion nusee of a statute mer- version per voy d'escheat; by way of escheat; and chant extendeth a seig- et si apres le tenant if after the tenant mafait walt, le seignior keth wast, the lord any attornement. If a avera briefe de wast shall have a writ of envers luy, nient con- waste against him, nottristeant que il ne un- withstanding that he neques atturna, * causa ver attorned, causa qua quâ supra. Mes lou un supra. But where a man home claime per force claimeth by force of the del graunt fait per le sine grant made by the sine; + scilicet, come heire, scil. as heire, or as assigou come assignee, &c. la nee, &c. there hee shall il ne distreinera ! ne a- not distraine nor avowe, vorvera, ne avera action nor have an action of de wast, Sc. sans attor- waste, &c. without attornement.

Secondly, where he that commeth in by act in law is in the per, as the heire of the conuice, who letteth in his anceltor's seat, tanquam pars antecessoris de sanguine, and the lord by eichest, which is an estranger, and commeth in meerely in the post.

Sect. 585.

ITEM, en ancient boroughs ALSO, in ancient boroughs and et cities, lou terres et tene- cities, where lands and te-

ments

4 &c. added L. and M. and Roh.

I ne avorvera not in L. and M. nor Roh. nor in MSS.

ments deins mesme les bo- nements within the same bo- (F. N. B. 121 n.)
roughes et cities sont devisable roughes and cities are devisable nant n'attorna pas.

Lib. 3.

per testament per custome et use, by testament by custome and use, Esc. si en tiel & borough ou citie &c. if in such borough or citie a home soit seiste de rent service, ou man be seised of a rent service, or de rent charge, et devisa cel rent of a rent charge, and deviseth such ou service a un auter per son testa- rent or service to another by his ment et morast; en cest cas celuy testament and dieth; in this case, a que tiel devise est fait, poit di- he to whom such devise is made, streiner le tenant pur le rent ou may distreine the tenant for the service aderere, coment que le te- rent or service arere, although the tenant did never attorne.

HERE doth Littleton put a case where a man may have a seigniory, rent, reversion, or 34. H. 6. 6. 5. H. 7. 18. remainder meerely by the act of the party, and may distraine, and have any action 19. H. 6. 24. 21. H. 6. 38. without any attornement, and that is by devise of lands devisable by custome when Littleton F. N. B. 181. h. wrote, by the last will and testament of the owner.

Sect. 586.

EN mesme le maner est, sou IN the same manner is it, where home lessa tiels tenements a man letteth such tenements que le tenant ne unque attorna. Et la cause est, pur ceo que la volunt le devisour fait per son testament serra performe solonque Pentent del devisour; et si l'effeet de ceo girroit sur l'attournement del tenant, + donques per case le tenant ne voyle unques atturner, et donques le volunt del devisor ne serroit unque performe, # &c. et pur ceo le devisee distreinera, &c. ou avera action de wast, &c. sans attournement. Car si home devisa tiels tenements a un auter per son testament, habendum sibi imperpetuum, et morust, et le devisee enter, il ad fee simple,

devisables a un auter pur terme devisable to another for life, or de vie, ou pur terme d'ans, et de- for yéares, and deviseth the rever- (6. Rep. \$3.) visa le reversion per son testament sion by his testament to another (5. Rep. 68.) a un auter en fee, ou en fee taile, in fee, or in fee taile, and dyeth, et morust, et puis le tenant fait and after the tenant commits waste, wast, celuy a que le devise suit he to whom the devise was made fait avera briefe de wast, coment shall have a writ of waste, although the tenant doth never attorne. And the reason is, for that the will (1. Rep. 120. 3. Rep. 19. of the devisor made by his testament shall bee performed according to the intent of the devisor; and if the effect of this should lye upon the attornement of the tenant, then perchance the tenant (8. Rep. 94.) would never attorne, and then the will of the devisor should never (10. Rep. 46. 87.) bee performed, &c. and for this the devisee shall distraine, &c. or (4. Rep. 66.) he shall have an action of waste, &c. without attornement. For if a man deviseth such tenements to another by his testament, babendum sibi imperpetuum, and dieth, and the caula

+ & added L. and M. and Roh.

1 &c. not in L. and M. nor Role.

§ cas added L. and M. and Roh.

causa qua supra; * uncore + si sibi imperpetuum, et livery de seisin sur ceo fuit fait, il n'averoit estate forsque pur terme de sa vie.

. Cap. 10.

devisee enter, hee hath a fee simple, fait de feoffment ust este ! fait a causa qua supra; yet if a deed of. luy per le devisor en sa vie de seoffment had beene made to him mesmes les tenements, habendum by the devisor of the same tenements, babendum sibi imperpetuum, and livery of seisin were made. upon this, heeshould have an estate but for terme of his life.

(r. Roll. Abr. 293.) Vide Scet. 167. Bracton II. 1. f. 11. & f. 60. Fleta lib. 2. cap. 15. Britton fol. 78. & f. 212. b. (6. Rep. 23. Ant. 9. b.)

22. E. 3. 16. 34. H. 6. 7. 15. H. 7. 12. 19. H. 8. 4.

Vide Sect 167.

POTH this and the precedent case stand upon one and the same reason, which Littleton here yeeldeth, viz. because that the will of the devisor expressed by his testament shall be performed according to the intent of the devisor; and it shall not lie in the power of the tenant or lessee to frustrate the will of the devisor by denying his attornment. Here Littleton, mentioneth a maxime of the common law, viz. Quòd ultima voluntas testatoris est perimplenda secundum veram intentionem suam; and, Reipublica interest suprema hominum testamenta rata baberi.

Testamentum, i. e. testatio mentis, which is made nullo præsentis metu periculi, sed solà cogitatione mortalitatis. Omne testamentum morte consummatum.

Car si home devisa tiels tenements a un auter, &c. Here Littleton putteth a case where the intent of the testator shall be taken, viz. where a man by devise shall have a fee simple without these words (heires); and here Littleton putteth the diversitie betweene a will and a feoffment.

Now by the statutes of 32. and 34. H. 8. (as hath beene said in the chapter of Burgage) lands, tenements, and hereditaments are devisable, as by the said acts doe appeare.

Sect. 587.

ITE M, si home seisie d'un man-nor quel est parcel en demesne et parcel en service, et ent soit disseisse, mes les tenants que teignont del mannor ne unque attournant \s a le disseisor; en cest cas, coment que le disseisor morust seisie, et son heire soit eins per discent, &c. uncore poit le disserble distreme pur le rent arere, et aver les services, &c. Mes si les tenants viendront al disseisor, et diont, Nous deveignomus vostre tenants, &c. ou auter attournement a luy fesoyent, &c. et puis le disseisor morust seisie, donque le disseisee ne poit distreine pur le rent, &c. pur ceo que tout le manor discendist al beire le disseisor, Bc.

ALSO, if a man bee seised of a mannor which is parcell in demesne and parcell in service, and is thereof disseised, but the tenants which hold of the mannor doe never attorne to the disseisor; in this case, albeit the disseisor dieth seised, and his heire is in by discent, &c. yet may the disseisee distreine for the rent behinde, and have the services, &c. But if the tenants come to the disseisor and fay, We become your tenants, &c. or make to him some other attornement, &c. and after the difseisor dieth seised, then the disseisee cannot distraine for the rent. &c. for that all the mannor descendeth to the heire of the diffeifor, &c.

(V. Rep. 69. a.)

LITTLETON having spoken of chates gained by lawful conveyances, doth now speake of chates gained by wrong; and here putteth a case of a distributed a mannor, where It appeareth, that the diffeifor cannot diffeife the ford of the rents or services without the

[&]quot; et added L. and M. and Roh. + fi-le, L. and M. and Roh. + nfl efte-fuit, L. and M. of a le-de le, L. and M. and Roh.

the attornement of the tenants to the disseisor; for seeing an attornement is requisite to a feoffment and other lawfull conveyances, à fortiori, a disseisor or other wrong doer shall not gaine them without attornement. The like law is of an abator and an intrudor. But albeit 6. H. 7. 14. 11. H. 7. 18. the diffeifor hath once gotten the attornement of the tenants and payment of their rents, yet may they refuse afterwards for avoiding of their double charge. And here the attornement of the tenant of a mannor to a disseisor of the demeanes shall dispossesse the lord of the rents and services parcell of the mannor, because both demeanes, rents and services make (1. Roll. Abr. 662.) but one entire mannor, and the demeanes are the principall: but otherwise it is of rents and services in groffe, as in this next Section our author teacheth us.

11. H. 4. 14. a. b. (Cro. Car. 303. Ant. 180.)

Sect. 588.

rer le tenant estre per tant de &c. temps arere-pur paier a moy meme le rent, &c.

MES si un tient de moy per put de moy per rent service, le quel est un rent service, le quel est un service, which is a service-Roll. Abr. 658.

Service en grosse, * et nient per rea- in grosse, and not by reason of my son de mon mannor, et un auter mannor, and another that hath no que nul droit ad, + claima le rent, right, claimeth the rent, and receives Let receive et prent mesme le rent and taketh the same rent of my tede mon tenant per cobersion de nant by coertion of distresse, or by odistres, ou per auter forme, et ther forme, and disseiseth mee by disseisst moy per tiel prender de such taking of the rent; albeit such rent; coment que tiel disseisor mo- disseisor dieth so seised in taking rust issint seiste en pernant de rent, of the rent, yet aster his death I uncore apres sa mort jeo puissoy may well distreine the tenant for bien distreiner le tenant pur le the rent which was behinde berent que fuit aderere devant le fore the decease of the disseisor, decease del disseisor, et auxy a- and also after his decease. And the pres son decease. Et la cause est, cause is, for that such disseisor is (Ant 1891 b. pur ceo que tiel disseisor n'est pas not my disseisor but at my election * Siders 75.) mon disseisor for sque a ma clèc- and will. For albeit he taketh the tion et ma volunt. Car coment rent of my tenant, &c. yet I may at que il prent le rent de mon tenant, all times distreine my tenant for &c. uncore jeo puissoy a touts the rent behinde, so as it is to mee foits distreiner mon tenant pur but as if I will suffer the tenant to le rent arere \oing, issint que il est a bee so long time behinde in paymoy for sque sicome jeo voile suffe- ment of the same rent unto me,

Sect. 589.

CAR le payment de mon te- FOR the payment of my tenant (3. Rep. 17.) nant a un auter a que il ne to another to whom hee ought doit pas payer, n'est pas disseisin not to pay, is no disseisin to me, nor a moy, ne ousta moy pas de mon shall oust me of my rent without rent sans ma volunt ¶ et ma elec- my will and election, &c. For altion, &c. Car coment que jeo puis- though I may have an assise against soy aver assis envers tiel per- such pernor, yet this is at my elec-110r,

et nient per reason de mon mannor, not in L. and M. nor Ruh. + claima ---- claimant mefers, L. and M. and Roh. | deceafe-diffrefs, L. and M. and Roh. I et receive-a receiver, L. and M. and Roh. § & w added L. and M. ¶ et—ou fans, L. and M. and Roh. of per—de, L. and M. and Roh. and Roh.

nor, uncore ceo est a mon election, si jeo voile prender luy come mon disseisor, ou non. Issint tiels. discents de rents en gros ne ousteront pas le seignior de distreyner, mes a chescun temps ils poyent bien distreiner pur le rent arere, &c. Et en cest case si apres le distresse de luy que issint toreiousment prist le rent, jeo graunt per mon fait le service a un auter, et le tenant attourna, ceo est assets bone, et les services per tiel grant et attournement maintenant sont en le grantee, Ec. Mes auterment est lou le rent est parcel del manor, et le disseisor morust seisie del manor entier, come en le case procheine avant est dit, છેંંદ.

tion, whether I will take him as my disseisor, or no. So such discents of rents in groffe shall not oust the lord of his distresse, but at any time he may well distreyne for the rent behinde, &c. And in this case if after the distresse of him which so wrongfully tooke the rent, I grant by my deed the service to another, and the tenaunt attorne, this is good enough, and the services by fuch grant and attornement are. presently in the grantee, &c. But otherwise it is where the rent is parcell of a mannor, and the difseisor dieth seised of the whole mannor, as in the case next before is fayd, &c.

¶л. Rep. 37o. Rep. 51. Hob. 322.)

* Vid. S:ct. 237, 238, 239, 240. {Cro. Car. 303.}

24. E. 3. 4. 1. E. 5. 5. ing in the next paroffe. 3. E. 4. 1. 23. H. 3. tit. Aff. 439. 16. E. 3. Release 56. 1. E. 5. 5. bringing of an assis, &c. F. N. B. 179. E. 15. E. 4. 8. Flet. li. 4. ca. 12.

(Ant. Scet. 541.)

TERE Liteleton putteth a diversitie betweene a rent service parcel of a mannor, whereof he had spoken before, and a rent service in grosse. For a man cannot be disseised of a rent service in grosse, rent charge, or rent seeke, by attornement or payment of the rent to a stranger, but at his election; for the rule of law is, Nemo redditum alterius invito domino percipere aut possidere potest; and our author hath before * taught us what be diffeifins of rents services, rents charges, and rent secks, and payment to a stranger is none of them, but at the lord's election, as our author here faith.

Permor, i. e. the taker of my rent. But if the disseisee bring an assie against such a See the authorities there follow- pernor, then he doth admit himselfe out of possession.

Discents. A discent of a rent in grosse bindeth not the night owner but that he may 24. E. 3. 40. 34. 16. All. p. 15. distreync, albeit he admitted himselfe out of possession, and determined his election, as by

> If the tonant of the land, pay the rent to a stranger which hath no right thereunto, and the right owner release to him, this release is good because he thereby admitted himselfe to bee out of possession. But if the tenant had given him any thing in name of attornement, and the right owner had released to him, this release had beene void, because an attornement only can be no disseisin of the rent.

> Jeo grant per mon fait, &c. This also proveth, that the right owner is not out of possession, and that this grant over is a demonstration of his election that hee is in posfession.

Sect. 590.

ITEM, si jeo sue seisse d'un ALSO, if I bescised of a mannor, manor, parcel en demessie, et parcel in demessie, and parparcel en service, et jeo donc cell in service, and I give certaine. certaine acres del terre, parcel de acres of the land, parcell of the demesne de mesme le manor, a un demesne of the same mannor, to auter.

avera mesine le rent et services, have the same rent and services, Æc.

auter en le taile, rendant a moy another in taile, yeelding to mee et a mes heires un certaine rent, and to my heires a certaine rent, &c. si en cest case jeo sue dissei- &c. if in this case I be disseised of (Dyer 94. b.) sie de la manor, et touts les te- the mannor, and all the tenaunts nants atturnent et payent lour attorne and pay their rents to the rents al disseisor, et auxy le dit disseisor, and also the sayd tenant tenant en le taile paya le rent per in taile pay the rent by me reservmoy reserve, al disseisor, et puis ed, to the disseisor, and after le disseisor morust seisie, * Esc. et the disseisor dieth seised, &c. and son heire entra, et est eins per dis- his heire enter, and is in by dis-cent, uncore en cest case jeo puisse cent, yet in this case I may wel disbien distreigner: le tenant en le treyne the tenant in taile, and his (cro. Car. 303.) taile, et ses heires, pur le rent per heires, for the rent by me reserved moy reserve sur le done, scilicet, upon the gift, scilicet, as well for the auxy-bien pur le rent esteant ade- rent being behinde before the disrere devant le descent al heire le distinct cent to the heire of the disseisor, seisor, et auxy pur le rent que bap- as also for the rent which happeth pa d'estre aderere apres mesme le to be behind after the same discent, discent, nient obstant tiel morant notwithstanding such dying seised seiste del disseisor, &c. Et la cause est, of the disseisor, &c. And the reapur ceo que quant bome dona tene- son is, for that when a man giveth ments ten le taile, savant le re- lands in taile, saving the reverversion a luy, et il sur le dit done sion to himselfe, and hee upon the reserva a luy un rent ou auters sayd gift reserveth to himselfe a services, tout le rent et les ser- rent or other services, all the rent vices sont incidents a la rever- and services are incident to the sion; et quant un home ad un re- reversion; and when a man hath a version, il ne puissoit estre ouste de reversion he cannot be ousted of son reversion per le fait d'un est his reversion by the act of a trange home, sinon que le tenant stranger, unlesse that the tenaunt soit ouste de son estate et possession, be ousted of his estate and posses-&c. Car si longement ‡ que le sion, &c. For as long as the te- (8, Rep. 29.) tenant en le taile et ses heires nant in taile and his heires conticontinuont lour possession per force nue their possession by force of my de mon done, cy longement est le gift, so long is the reversion in me reversion en moy et en mes heires: and in my heires: and in as much et entant que le rent et les services as the rent and services reserved reserves sur tiel done sont inci- upon such gift be incident and dedents et, dependants al reversion, pending upon the reversion, whoquecunque que ad le reversion, soever hath the reversion, shall

Sect.

&cc.

oc. not in L. and M. nor Roli.

⁺ a un auter added in L. and M. and Roh.

Sect. 591.

fion, &c.

EN mesme le maner est, sou IN the same manner is it, where jes lessa parcel del demesne I let parcell of the demesnes of del manor a un auter pur terme the mannor to another for terme de vie, ou pur terme d'ans, rendant of life, or for terme of yeares, rena moy certaine rent, Ec. coment dring to mee a certaine rent, &c. que jeo soy disseisie del manor, &c. albeit I be disseised of the mannor, et le disseisor morust seisie, * &c. et &c. and the disseisor die seised, &c. son beire + esteant eins per discent, and his heire bee in by discent, yet uncore jes distreiner pur le rent I may distreine for the rent arere. arere ut supra, nient obstant tiel ut supra, notwithstanding such disdiscent; car quant home ad fait cent; for when a man hath made tiel done en taile, ou tiel leas pur such a gift in taile, or such a lease. terme de vie, ou pur terme d'ans, for life, or for yeares, of parcell of del parcel de le demesne de un the demesnes of a mannor, &c. manor, &c. savant le reversion a saving the reversion to such donor tiel donour ou lessour, &c. et puis or lessor, &c. and after he is disseiil soit disseisse de le manor, &c. tiel sed of the mannor, &c. such reverreversion apres tiel disseisin est sion after such disseisin is severed sever del manor en fait, coment from the mannor in deed, though que ne soit sever en droit. ‡ Et is- it be not severed in right. And so fint poyes veier (mon fits) diver- thou mayst see (my sonne) a diversitie, lou il y ad un manor par- sitie, where there is a mannor parcel en demesne et parcel en ser- cell in demesne and parcell in services, les queux services sont par- vices, which services are parcell cel de mesne le manor nient in- of the same mannor not incident cidents a ascun reversion, &c. to any reversion, &c. and where et lou ils sont incidents al rever- they are incident to the reversion,

(Cro. Car. 303. 1. Roll. Abr. 658. 11. Rep. 47, 48. Plowd. 197.b.)

TERE Littleton putteth a diversitie betweene rents and services parcell of a mannor (whereof he had spoken before) and rents and services incident to a reversion parcell of a manner.

And the reason of this diversitie is, for that as long as the donce in taile, Jessee for life, or lessee for yeares, are in possession, they preserve the reversion in the donor or lessor; and so long as the reversion continue in the donor or lessor, so long do the rents and services which are incident to the reversion belong to the donor or lessor. Neither can the donor or lessor be put out of his reversion, unlesse the donee or lesse be put out of their possession; and is the donce or lessee be put out of their possession, then consequently is the donor or lessor put out of their reversion. But if the donce or lessee make a regresse, and regaine their estate and possession, thereby doe they ipso sallo revest the reversion in the donor or lessor.

And here is to be observed, that when a man is seised of a mannor, and maketh a gift in 'taile, or lease for life, &c. of parcell of the demesne of the mannor, [4] the reversion is part of the mannor, and by the grant of the inaunor the reversion shall passe with the attorner ment of the donce or leffee. But if the lord make a gift in taile, or a leafe for life of the whole mannor, excepting Blacke Acre, parcell of the demelnes of the mannor, and after he granteth away his mannor; Blacke-Acre thail not passe; because during the estate taile, or lease for

[a] 18. Aff. p. 2. 38. II. 6. 33. Pl. Com. Fulmerstone's cale 10 3. Lib. 5. fol. 11, 12, 25, 19. E. 2. Briefe 845. 4. E. 3. Briefe 713. (Post. 349. 11. Rep. 50. b)

+ esteant not in L. and M. nor Rob.

\$ & c. added L. and M. and Roh.

Lites

life it is severed from the mannor. And so note a diversitie, that a reversion of part may be parcell of a mannor in possession, but a part in possession cannot be parcell of the reversion of a mannor expectant upon any estate of freehold. But if a man make a lease for yeares of a mannor, excepting Blacke Acre, and after granterh away the mannor, Blacke Acre shall passe, because the freehold being entire, it remaineth parcell of the mannor, and one præcipe of the whole mannor shall serve. But otherwise it is in case of the gift in taile or lease for life excepting any part, there must be severall writs of præcipe, because the freehold is feverall.

CHAP. 11. Of Discontinuance.

Esc. Mes quant a un un home ad alien a un ou tenements et morust, et un auter ad droit de aver mesmes les terres ou tenecause de tiel alienation, Ec.

divers significations, divers significations, &c. But as to one entent il ad tiel sig- intent it hath this signisication, scilicet, lou nisication, viz. where a man hath aliened to auter certaine terres another certaine lands tenements and dieth, and another hath right to have the same lands or teentrer en eux per not enter into them because of such an alienation, &c.

Discontinuance est Discontinuance is a vide Sect. 637.

un ancient parol en la ley, et ad in the law, and hath

Discontinuance is a vide Sect. 637.

word compounded of de and continuo, for continuare is to continue without inis to continue without intermission. Now by addition of de (euphoniæ gratia dis ··· to it), which is privative, it signifieth an intermission. Discontinuare nibil aliud signi- 'F ficat quam intermittere, desuescere, interrumpere. And as our author saith, [a] it [a] 8. H. 4. 8. b. 11. H. 4. 85. b. is a very ancient word in law (1).

A discontinuance of estates (10. Rep. 97.) in lands or tenements is properly (in legall understanding) an alienation made or ments, mes il ne poit nements, but hee may suffered by tenant in taile, or by any that is seised in auter droit, whereby the issue in taile, or the heire or fucceffor, or those in reversion or remainder, are driven to their

action, and cannot enter.

All which is implied by the description of our author, and by the (&c.) in the end of this Section.

I have added (properly,) by good warrant of our author himselfe, for Sectione 470. he useth discontinuance, for a devesting or displacing of a reversion, though the entrie be not taken away.

This discontinuance consisteth in doing or suffering an act to be done, as hereafter shall (1. Roll. Abr. 130. 485.) appeare. And where our author faith, that it hath divers significations, there is also a discontinuance of processe consisting in not doing, where the processe is not continued, concerning which there is an excellent statute made in furtherance of justice in [b] 1. E. 6. and [b] Vide the Statutes of 1. E. 6. is well expounded in my Reports, and therefore need not here to be inserted.

There is another erroneous proceeding, and that confifteth in misdoing; as when one processe is awarded instead of another, or when a day is given which is not legall, this is called a miscontinuance, and if the tenant or defendant make default, it is error; but if he appeare, 39. E. 3. 7. a. 46. E. 3. 30. then the miscontinuance is salved, otherwise it is of a discontinuance. But let us returne to the discontinuance of estates in lands, whereof Littleton doth treat in this Chapter.

Significations. Here (as in many other places) it appeareth how necessary it is to Vide Sect. 74. 174. 194. 441.520.

knowithch lignification of words.

And in this Chapter it appeareth, that when Littleton wrote, the estate in lands and tenements might have beene diffcontinued five manner of wayes, viz. by feofiment, by fine, by releafe with warrantic, confirmation with warrantie, and by fuffering of a recovery in a præcipe

.; ca. 7. & 31. Eliz. c. 1. lib. 7. f. 30. 31. &c. le case de discontinuance de proces. (1. Sid. 173. 2. Cro. 284.) 37. H. 6. 25. 26. 9. E. 4. 18. 12. E. 4.

(1) I. As to discontinuances in general: - In note 1. p. 239. a. it was observed, that in the case of a disselsin, while the possession remains in the diffeisor, it is a more naked possession, unsupported by any right; and that the disseise may restore his possession, and put a total end to the possession of the disseisor, by an entry on the land, without any previous action; but that, if the disseisor dies, the heir comes to the possession of the estate by a lawful title. It is the same if the discisor aliens; the alience comes in by a lawful title. By reason of this lawful title, the heir, in the first instance, and the alience, in the second, acquires a presumptive right of possession which is fo far good even against the person disseised, that he loses by it his right to recover the possession by entry, and can only recover it by an nation at law. When the right of entry is thus loft, and the party can only recover by action, the possession is said to be discontinued. This is the general import of the word descentionance; but, in its usual acceptation, it signifies the estest of alienations made by husbands feised jure uxoris; by ecclesiastics seised jure ecclesie; or by tenants in tail; those being the three instances adduced by Littleton of a discontinuance. But other cases, where the party having the right could not restore his possession by entry, and was therefore left to his remedy by action were also, in Littleton's time, termed discontinuances. Thus, before the statute of the 11. H.7. c. 20. the alienations of a woman feifed of an efface in dower, or of any efface of the gift of her hufband, or of any of his ancestors, were said to be a discontinuance; and before the statutes of 32. II. 8. c. 31. and 14. El. c. 8. recoveries suffered by tenants for life, or tenants by the equites, or tenants in sail, after possibility of issue extinct, or even by the sepsice of tenant for years, worked a discontinuance. See Bir William Pelham's ense, 1. Rep. 14. It is to be observed, that there is a material difference between the situation or title of the alience of any person whose alienation makes a discontinuance, and the situation or title of the heir or alience of a disselsor; for the heir and alience of a diffeifor immediately claim under a person coming in by a wrongful title, and their estates, though not descasible by entry, are immediately defentible by action. But the alience of every person, whose alienation is said to be a discontinuance, claims by a person having a lawful estate, and the estate of the alience is unimpeachable during the life of the discontinuor. It should also be observed, that a diffeortinuance extends to those cases only, where a person is dispossessed of an estate of freehold; and where, though he has loft his right of entry, he can fill recover the possession by action. At the common law, if there was a term for years, and the tenant of the frechold fullered a common recovery by covin, it was a good har to the termor; for, not having the freehold, he could not fallify the recovery, to that all his term and interest in the land was lost, and his only temedy was an action of covenant against the leffor. His possession, therefore, or rather his interest, was absolutely lost, not merely interrupted. Even after the statutes of Cloncester, and the 21. 11. 8. c. 15. which preserved the interest of the termor for years, against a common recovery, as the possession of the termor for years is confidered in the law as the possession of him who has the next estate of freehold, the recovery is never said to discontinue the estate of the termor for years to the expression discontinuance being applied folely to those enses where the freehold is diverted. The peculiar import of the word discontinuance, where applied to the cases mentioned by Littleton, is shortly, but forcibly expressed by Mont. Honard, who explains the word discontinuance "Interruption du droit, qu'en a sur un sonds, par la wente

Cap. 11. Of Discontinuance. Sect. 593, 594. Lib. 3.

præcipe quòd reddat. And this was to the prejudice of five kinds of persons, viz. of wives, of heires, of successors, of those in reversion; and of those in remainder. But for wives, and their heires, and for fuccessors, the law is altered by acts of parliament since Littleton wrote, as in this Chapter in their proper places shall appeare.

Sect. 593.

SICOME un abbe AS if an abbot be

terres ou tenements en lands or tenements in

fee, et alienast mesmes sec, and alieneth the

les terres ou tenements same lands or tene-

a un auter en fee, ou ments to another in

en see taile, ou pur see, or in see taile, or

terme de vie, et * puis for terme of life, and

l'abbe morust, son suc- after the abbot dieth,

cessor ne poit enter en his successor cannot

les dits terres ou tene- enter into the said

ments, coment que il lands or tenements,

ad droit eux aver come, albeit he hath right to

en droit de son meason, have them as in right

mes il est mis a son of his house, but he is

action de recoverer put to his action to re-

mesmes les terres ou cover the same lands

tenements, quel est ap- or tenements, which

pelle, breve de in- is called a writ, breve

gressu sine assensu ca- de ingressu sine assensu

seisie de certaine leised of certaine

HERE Littleton putteth an example of a difcontinuance made by one seised in auter droit, as by an abbot who had a fee simple in the right of his monastery, and therefore his alienation without the affent of his covent had beene a discontinuance at the common law, and had driven his fuccessor to a writ de ingressu sinc assenfu capituli:

De ingressu sine assensu capituli, Ec. It is called so because the alienation was sine assensu capituli; for if it had beene cum afsensu capituli, it should have beene a barre to the successor. And because the successor could not enter, the common law gave him this writ, and is so called of these words contained in the writ, which writ you may read in the Register and Fitzberbert's N. B.

And here is to be noted,

pituli, &c. + that in law the covent, albeit they be regular and dead

capituli, &c. persons in law, yet are they said in law to be capitulum to the abbot, as well as the deane and chapter, that he fecular to the bishop. But it is to be observed and implied in this (\mathfrak{C}_c .) that, a sole body politike that hath the absolute right in them, as an abbot, bishop, and the like, may make a discontinuance; but a corporation aggregate of many, as deane and chapter, warden and chaplaines, master and fellowes, major and comminaltie, &c. cannot make any discontinuance; for if they joyne, the grant is good; and if the deane, warden, master, or major make it alone where the body is aggregate of many, it is void, and worketh a disseisin. But now (as hath beene said) by the statute of 27. H. 8. and 31. H. 8. all the abbots, priors, and other religious persons are so dissolved, as there be none remaining this day, and by the statutes of 1. Eliz. and 13. Eliz. cap. 10. and 1. Jac. cap. 3. bishops and all other ecclesiasticall persons are disabled to alien or discontinue any of their ecclesiasticall livings, as by the same acts doth appeare (1).

Registr. Orig. fol. 230. F. N. B. 195. Bracton li. 4. fol. - 329. Fleta lib. 5: ca. 34.

21. E. 4. 86. (Plo. 536.) (Ant. 85. a.) (Post. 341. b.) (11. Rep. Magdalen College's cafe.)

See more of this matter hereafter in this chapter Sect. 648. and before Sect. 528.

Sect. 594.

EN droit sa feme, ITEM, si home seisse ALSO, if a man be de terre come en droit say, in see simple, see taile, as in right of his

* puis not in L. and M. nor Roh.

+ &c. not in L. and M. nor Roh.

vente qu'un autre chargé de conserver ce droit, en a faite. Sec Anciennes Loix des Francois, 2 vol. 435. Our doctrine of discontinuance bears some analogy to the doctrine of Interruption in the civil law .- There, interruption, when applied to the real property, fignifies the ousting of a person from the possession of his land. From that time, he ceases to be the possession of it; and if he does not renew his possession, but permits the dispossession to retain it, he absolutely loses his right to it, and the disselsor is said to acquire it by prescription. It is observable, that by the laws of the Twelve Tables, possession during two years formed a prescription for land; one year, for personal estate. Dio. Sic. 20. In 3. Rep. fol. 8. b. 9. n. Lord Coke observes, that the reason why the. law will not permit a person who is in by judgment of law, to have his possession disturbed by the disselse, is, "to take away the "multiplicity and infiniteness of fuits, trials, recoveries, and judgments in one and the same case; and therefore in the judgment "and policy of the law, it was thought more profitable to the commonwealth, and more for the honour of the law, to leave some "without remedy, and to put others to their writ of right, without any respect of coverture, &c. than that there should not be any " end of actions and fuits."

(1) II. As to discontinuances by ecclesiastical persons :-It is generally supposed that ecclesiastical persons were permitted to acquire real estates, as early as the reign of the emperor Constantine. The tenth century is commonly considered as the period when donations to them were most frequent and considerable. Very soon after they were permitted to acquire, they were restrained from alienating, their property. See Dec. Gra. Caf. 12. Q 2. c. 3. Long leafes made by ecclehastical persons, are declared to be null by the Council of Trent, Seff. 25. de Ref. ch. 11. For the learning relating to the leafes made by ecclefiaffical perfons, the editor begs to refer to the muchndmired collections on this subject in Bacou's Abr. vol. 3. tit. Leases, supposed to be extracted from a manuscript of Sir Geosfry Gilbert. It is to be observed, that bishops and abbots were supposed to have the possession in fee, and might therefore alien in see ; but parsons were considered to have no more than a life estate. See Gilb. Ten. 108.

(2) III. As to discontinuances by persons seised jure uxoris:—It is generally supposed that women, by reason of their incapacity to perform military duty, were not originally admitted to succeed to proper siefs: so that if the sief, by its original constitution, were descendible to the females, it was, upon that very account, ranked among improper fiefs. See Craig, de Jure Feud. 48, 50, 236, Stry. Ex. Jur. Feud. cap. 4. 2. cap. 15. 2. 3. By the Salie law, the females were excluded from fucceeding to effaces, either lineally or collaterally.-It may not be improper to mention here, that there are two different codes of this law. One of them is supposed to have been collected before christianity was received into France. -The other is of a later date; and appears to be a republication of the former, with confiderable alterations, both in Substance and phraseology; and with several new regulations supposed to have been made by the princes who filled the throne of that kingdom, after the introduction of christianity.—The former code contains the following claufe: " De terra verd Salica in mulierem nulla portio bæreditatis transit; sed hoc virilis sexus acquirit; hoc est, filli in hareditate succedunt." In the latter, it is expressed in this manner: " De tergal autem Salied, nulla portio bereditatis muvitâ, &c. in vitâ, &c.

de sa feme, * &c. et wife, &c. and thereof ent enfeossa un auter, infeosse another, &c. Esc. tet morust, la seme and dieth, the wise. ne puit enter, mes est may not enter, but is mis a son action, le- put to her action, the quel est appel, cui in which is called, cui

or for life. Here Littleton putteth another case where a man is seised in auter droit, and may make a discontinuance, aș the husband seised in the right of his wife, and therefore the common law gave her a cui Bracton lih. 4. f. 202. & 22. & in vita, and her heire a sur cui 324. Fleta lib. 5. ca. 34. & 36. in vita, because they could not F. N. B. 193. Regill. 32. H. 8. enter. But this is altered fince our author wrote, by the

statute of 32. H. 8. by the purview of which statute, the wife and her heires after the decease of her hulband may enter into the lands or tenements of the wife, notwithstanding the alie-

nation of her husband.

And here is one of the alienations to make a discontinuance, viz. a scoffment; and where (1. Roll. Abr. 634. Ant. 187. b.) our author speaketh of a husband seised in the right of his wife, so it is where the husband and wife are joyntly seised to them and their heires of an estate made during the coverture, and the husband make a feosfinent in fee, and dieth, the wife now may enter within that Dier. 4. & 5. Ph. & Marie 146. statute, although it was the inheritance of them both. And so it is if the scoffment be made 3. Eliz. Dier. 191. Lib. 8. sol. by the husband and wife, (albeit the words of the statute be by the husband only) for in sub- 71, 72. Greveleye's case. stance this is the act of the husband only. (1)

If the husband cause a præcipe quòd reddat upon a faint title to be brought against him and Greveleye's case ubi suprahis wife, and suffereth a recovery without any voucher, and execution to be had against him (2. Inst. 343.) and his wife, yet this is holpen by the statute; for this by like construction is the act of the

husband, and the words of the statute be, made, suffered, or donc.

If the husband make a seoffment in see of the lands which he holdeth in the right of his (F. N. B. 205. f. 7. Rep. 42. wife, and after they are divorced causa præcontractus, yet the woman may enter within the 4. Rep. 29.) purview of that statute, and is not driven to her writ of cui ante divortium, as she was at the common law, albeit the entrie be by the statute given to the wife; and now upon the matter she was never his lawfull wife. But it sufficeth that she was his wise de facto at the time of the alienation, and where her husband dieth she cannot be his wife at the time of the entric.

If the husband levie a fine with proclamations, and dieth, the wife must enter or avoid the estate of the conusee within five yeares, or else she is barred for ever by the statute of 4. H. 7. for the statute of 32. H. 8. doth helpe the discontinuance but not the barre; and the statute

speaketh of a fine, and not of a fine with proclamations.

If lands be given to the husband and wife, and to the heires of their two bodies, and the husband maketh a feoffment in fee and dieth, the wife is holpen by the said statute, as hath beene said, and so is the issue of both their bodies. Feme tenant in taile taketh husband, the (Hob. 261. 9. Rep. 140. husband maketh a feoffment in fee, the wife before entric dieth without issue, he in the rever- Dyer. 224. a. 3. Inst. 216.) sion or remainder may enter. For, first, the reversion or remainder cannot be discontinued in this case, because the estate taile is not discontinued. Secondly, the words of the statute be; Shall not be prejudiciall or hurtfull to the wife or her beires; or such as shall have right title or interest by the death of such wife, but that the same wife and her heires; and such other to whom such right shall appertaine after her decease, shall or lawfully may enter into all such mannors, lands, Esc. according to their rights and titles therein: by which words the entrie of him in the reverfion or remainder in that case is preserved. The husband is tenant in taile, the remainder to the wife in taile, the husband make a feoffment in fee; by this the husband by the common law did not only discontinue his owne estate taile, but his wife's remainder: but at this day after the death of the husband without issue, the wife may enter by the said act of 32. H. 8. 8. E. 2. tit. cui in vita 26. If the husband hath issue, and maketh a feoffement in fee of his wife's land, and the wife dieth, the heire of the wife shall not enter during the husband's life, neither by the common law nor by the statute.

Cui in vitâ, &c. Here is also implied a sur cui in with also for the heire. This writ here mentioned in our author is so called of those words contained in the writ, which you may reade in the Register and Fitzberbert's N. B.

(9. Rep. 140. a.)

6. E. 6. Dier. 72. b.

4. H. 7. c. 24.

Greveleye's cafe ubi supra. Pasch. 7. Jac.

34. E. 1. ibidem 30. 10. É. 2. 12. Dier. 21. Eliz, 363.

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&c. not in L. and M. nor Roh.

† &c. not in L. and M. nor Roh.

(1) But a fine sevied both by husband and wife of her lands, is not within the statute; and it operates as a bar to her and her heirs, of all her estate and interest in the land. See 2. Rep. 57. b. 77. b.

[&]quot; lieri venial, sed ad virilem sexum tota hæreditas perveniate" But in the course of time, women were admitted, generally, to fucceed to all hefs; and even the Salic law lost all its force, except as to the succession to the crown, in which respect it has been invariably observed from the earliest period of the French monarchy to the present time. This exclusion of semales and their descendants from the crown, is now universally agreed to be a fundamental law of that monarchy.—Even in the dispute between Philip Valois and Edward the Third, the validity of the law as to the daughters themselves, was never questioned; the only dispute was, whether it extended to the male descendants of the daughters. Edward the Third contended it did not; but the decision of the affembly, which was held upon this affair, at Paris, and which was composed of the chief nobility, prelates, and burghers of the kingdom, being against him; and the wars which were undertaken in support of his right, proving unfavourable to the English; it is now settled beyond all controversy, that the descendants of the daughiers are excluded from the throne of France, as much as the daughters themselves. In consequence of this doctrine, Henry the IVth succeeded to the throne at the distance of twenty-one degrees from his immediate predeccsfor. See Rapin's Dissertation on the Salic Law, and Le Brun Traite des Successions, l. 2. c. 2. §. 2. This exclusion from the throne of France did not prevent women succeeding there to every other dignity, so as even to become peers of France. Many instances are upon record of their personally presiding in their own courts, even over judicial combats; of their being furnmented to, and fitting in, the court of peers; and, what is confidered as the highest of honours, of their assisting as peers at the confectation of the king. Thus Mahaut, the counteft of Artois, affifted not only at the trial of Robert of Flanders, but at the ceremony of the coronation of Philip the Long, and with the other peers supported his crown. So, in England the celebrated Ann counters of Pembroke Dorfet and Montgomery had the office of hereditary fheriff of Westmoreland, and exercised it in person. At the uffixes at Appleby, the fat with the judges on the beach. The reader will find the revolutions in the laws and utages of France, in this reliect, flated with the most confummate learning and perspicuity by the Chancellor D'Aguesseau (then Attorney-General) in his pleading in the great cause of the Duke of Luxemburgh, toin. 3. p. 643. and in his Requeste fur la Mourance du Comté de Soissons, tom. 6. p. 1. & Observations sur les Pairies, tom. 7. p. 598. Proces verbal de ce que s'est possé au Parlement de Paris en 1716, au sujet d'un accusation de duel, intentée par le Procureur general du Roi contre un Pair de France, qui n'avoit pas encore été reçu en Parlement. 15. 616, and see also Droit Public de la France, par Monf. Bouquet, p. 332. The cause of the Duke of Luxemburgh gave rise to the edict of 1711. By that edict it was declared, that in the letters for the crection of peerages, whether granted before that time, or to be granted afterwards, the words heirs and faccesfors should only comprise male children, descended from him in whose favour the pecrage was first creeled, and males descended from males, without the intervention of a semale: That those clauses, which expressly comprited femules, should be confidered as having a condition annexed to them, that the femule becoming entitled under them, should marry no person without the consent of the king, signified by letters patent addressed to the parliament of Paris : That in these letters patent the peerage should be consumed to the husband, and his male descendants; and that the peer in whose favour the peerage of his WITD

Sect. 595.

FNFEOFFA un auter, &c. Here is implied, or make a gift in taile or an estate for life. Here Littleton putteth a third example of a discontinuance made by tënant in taile so as his issue is put to his formedon in the discender, which is given to the islue in taile by the statute of 13. E. 1. cap. 1. because he cannot enter.

This extendeth as well to a

ITEM, si tenant en ALSO, if tenant in taile de certaine taile of certaine terre ent enfeossa un land thereof enseosse auter, &c. et ad issue another, &c. and hath et morust, son issue ne issue and dieth, his issue poit pas enter en la may not enter into the terre, coment queil ad land, albeit he hath tititle et droit a ceo, tle and right to this, mes est mis a son ac- but is put to his action, que est appel tion, which is called a Tenant en taile formedon en le dis- formedon in le discen-

woman tenant in taile as cender, &c. der, &c. (1) to a man, and was generally good law when Littleton wrote; but now by the statute of [d] 11. H. 7. if the woman hath any estate in taile joyntly with her husband, or only to her Vide Scet. 607.

Purtistes felse or to her use in any lands or hereditaments of the inheritance or purchase of her husband, or given to the husband and wife in taile by any of the ancestors of the husband, or by any other person seised to the use of the husband or his ancestors, and shall hereafter being sole or with any other after taken husband discontinue, &c. the same; every such discontinuance shall be void; and that it shall be lawfull for every person to whom the interest, title, or inheritance, after the decease of the said woman should appertaine, to enter, &c. So as if such a seme tenant in taile doe make any discontinuance in sec, in taile, or for life, although it be without warrantie, yet this doth not take away the entry after her death, either of the issue or of him in reversion or remainder. This statute hath beene excellently expounded by divers resolutions and judgements [e] which I have quoted in the margent, and are worthy of due observation.

If lands were entailed to a man and to his wife, and to the heires of their two bodies, and the husband had made a feoffment in fee and died, and then the wife died, this had beene a discontinuance at the common law: for the title of the issue is as heire of both their bodies, and not as heire to any one of them, and his entric must ensue his title or action.

De formedon, De formâ donationis, so called because the writ doth comprehend the forme of the gift. And there be three kinde of writs of formedon, viz. The first in the discender to be brought by the issue in taile, which claime by discent per formam doni. The second is in the reverter, which lieth for him in the reversion or his heires or assignes after the state taile be spent. The third is the remainder, which the law giveth to him in the remainder, his heires or assignes, after the determination of the estate taile; of all which you may reade in the Register and F. N. B.

Here Littleton sneweth that the issue in taile shall have a formedon in the discender. What

other actions tenant in taile may have, and not have, is good to be scene.

[a] Tenant in taile shall have a quod-permittat.

[b] Tenant in taile shall have a writ of customes and services in le debet, et solet, but shall not have it in the debet only.

[c] In like manner he shall have a setsa ad molendinum in le debet et solet, but not in the debet tantum.

[d] Tenant in taile shall have a writ of entre in consimili casu and an admisurement, and a

nativo babendo, ceffavit, escheat, waste, and the like.

[e] But tenant in taile shall not have a writ of right fur disclaymer, nor a quo jure, nor a ne injusse vexes, nor a nuper obiit, or rationabile parte, nor a mordancester, nor a sur cui in wita; for these and the like, none but tenant in fee shall have; and the highest writ that a tenant in taile can have is a formedon.

Fleta lib. 5. cap. 34. F. N. B. 211, 212. Registr. (4. Rep. 3. b. Post. 365. b.)

(3. Cro. 244. 1. Rep. 102. b. ' 3. Rep. Lin. Coll. Cafe. 10. Rep 39. b. 6. Rep. 9. b. Bend. 40. Hob. 332. Jo. 31. - Cro. El. 2.)

[e] Lib. 3. fol. 50, 51. Sir George Browne's case codem lib. fol. 60, &c. Linc. Coll. casc. Lib. 1. fol. 176. Mildemaye's cafe. Dier. 3. & 4. Ph. & Mar. 146. Idem, 8 Eliz. 248. 17. Eliz. 340. Idem 19. Eliz. 354. Idem 20. Eliz. 362. 27. H.8. 23. Lib. 5. sol. 79. Fitzh. case. Lib. 8. fol. 71, 72. Greveleye's cafe. (F. N.B. 211.217. 8. Rep. 88.)

[a] 4. E. 3. 38. 43. E. 3. 25. 4. E. 4. 25. F. N. B. 124. [b] 2. E. 2. Droit. 28. 6 F. N. B. 123. [d] 21. E. 3. 11. 5. E. 3. 23. 11. H. 4. 49. [c] a. E. 3. Droit. 28. 13 H. 7. 21. 5. E. 4. 2. 20. E. 3. Avowric 131. F. N. B. 10. 46. E. 3. tit. Cut in vita, 33.

Sect.

wife was thus confirmed, should take his rank only from the day of his reception in parliament, under the letters patent. In the · same manner the duchy and peerage of Aubigny was granted in 1684, to the duchels of Portimouth, the duke of Richmond her fon, and his heirs male; but the letters patent by which this grant was made, were not registered; for want of which, though the title of duke of Aubigny had always been admitted by the court of France, and the dukes and ducheffes of Richmond had always been allowed at Versailles the honours attached to that dignity, the peerage was not admitted by the parliament. In 1779, his grace the present duke of Richmond obtained letters patent, confirming those of 1684, but with a clause, that neither his grace, nor any of the heirs male of his grandfather, the first duke of Richmond, should be received in parliament, until the possessor should be of the religion, and reside in the kingdom of France; and that the rank of the peerage should take place from the date of the reception. These last letters patent have been duly registered; but his grace's rank and precedence will not begin till his reception. In the mean time, the registry of the pectage in parliament is a recognition of it, and entitles his grace to all the other advantages, honours, and privileges annexed to the dignity. These, when the estate is considerable, are of very great importance. There are in France other peers, whose ancestors have neglected to be received in parliament, and who, being unwilling to take a rank lower than that which the date of their pecrage would give them, decline to be received there now. It is faid the due de Bouillon, the due d'Elbeuf, the due de Montbazon, and the due de Vallentinois, are in this predicament. Some of them claim to be older than the due de Ufez, who, by his ancestors having been sirst received, is now, in fast, the first duke in France. - Both in England and in France, females originally communicated their titles and dignities to their husbands. Many Inflances of this are to be found in the arguments on the claim of mr. Bertie to the barony of Willoughby. But this has long fince ceased; and we may apply to this circumstance the remark contained in the former part of this work, respecting courtesy in titles of honour, that from the late creations by which women have been made peereffes in order that the iffue of their husbands might have titles, yet the husbands themselves continue commoners, it seems that this right in women to communicate pecrages to their husbands is considered as extinct. See ant 296 not. 1. -- But though, by our law, a woman does not now communicate her rank or titles of honour to her hutband, yet the freehold, or the right of possession, of all her lands of inheritance, vests In him immediately upon the marriage, the right of property fill being preferved to her. 1 Inft. 35 t.a. 273. b. And fee Pathier Traite des Fiels, vol. 1. p. 123. This offare he may convey to another. An incorrect statement in the book called Cases in Equity, during the time of lord Talbot, fol. 167. of what was delivered by his lordship in the case of Robinson 7. Cummins, seems to have given rife to a notion that the hulband could not make a tenant to the precipe of his wife's efinte, for the purpole of fullering a common recovery of it, without the wife's previously joining in a fine; but it now feems to be a fettled point that he can. Mr. Cruife, in his Effny upon Recoveries, p. 38. has given an accurate flate of lord Talbot's observations upon this subject, which, in substance and almost in words, is agreeable to a manuscript report of the same case, in the possession of the editor. The same must be concluded from general reasoning.-For the interest which the husband takes in his wife's chattels, real and personal, see ant. 300, a. (1) IV As to discontinuances by tenants in tail with respect to their is the in the observed, that though the estate of the tenant in tail, as to his right of possession, or rather as to his beneficial property in the lands, has only a duration for the term of

Sect. 596.

ITEM, si soit tenant ALSO, if there bee FAIT feoffment, (F. N. B. 215.) enle taile, le reversion tenant in taile, the &c. Here is imesteant al donor et a reversion being to the ses heires, si le tenant donor and his heires, fait feoffment, * &c. if the tenant make a et morust sans issue, ce- feoffment, &c. and die luy en le reversion ne withoutissue, hee in the poit enter, mes est mis reversion cannot enter, a son action de forme- but is put to his action don en le reverter +. of formedon in le reverter (I).

Sect. 597.

fee, ou en fee taile, et taile, and after die withfont mis a lour briefe of formedon in the refeoffments et alyena- enations in the cases afeoffments et aliena- are called discontinutions sont appels dis- ances. continuances.

EN mesme le manner IN the same manner est, sou tenant en is it, where tenant in le taile ! seisie de cer- taile is seised of certaine terre dont le re- taine land whereof the mainder est a un auter remainder is to another en le taile, ou a un au- in taile, or to another in ter en fee. Si le tenant fee. If the tenant in taile en le taile alienast en alien in fee, or in feepuis deviast sans is- out issue, they in the resue, ceux en le remain- mainder may not enter, der ne poient enter, mes but are put to their writ de formedon en le re- mainder,&c.(2) and for mainder, &c. et pur ceo that that by force of que per force de tielx such seoffments and alitions en les cases avant- foresaid, and the like dits, et en semblables cases, they that have ti-§ cases, ceux queux ont the and right after the title et droit apres la death of such a feoffor mort de tiel feoffour ou or alienor may not enalienour ne poient pas ter, but are put to their enter, mes sont mises a actions, ut supra; and for lour actions, ut supra; this cause such feoffet pur ceo cause tiels ments and alienations

Ec. Here is implied fee simple, fee taile, or estate for life; and in this and the next Section Littleton putteth two cases, where if the issues in taile faile, they in the reversion and remainder are driven to their formedon in reverfion or remainder; and this remaineth as it was when Littleton wrote, not altered by any statute. And the reason whereof these alienations in the feverall cases in this and the next Section doe make a discontinuance, and put him in the reversion or remainder that right had to his action, and tooke away his entry, was, for that he was Vide Sect. 592. 597. 601: 637, privy in estate, and for the 638. benefit of the purchasor, and for the safeguard of his warrantie, so as every (F. N. B. 217. b.)
man's right might be preferved, viz. to the demandant for his ancient right, and to the feoffee for the benefit of his warrantie, which was founded upon great reason and equitie: which benefit of the warrantie should be prevented and avoided if the entrie of him that right had were lawfull, and thereby also the danger that many times happeneth by taking of possessions was warily prevented by law. But then it may be demanded, feeing that there was no reversion or remainder expectant upon any estate taile at the common law, nor the issue in taile had any remedy by the common law, 30. E. 1. Formedon 65. 19. E. 2. if the tenant in taile had Formedon 61. 18. E. 3. 46. aliened, then by what law is the alienation of tenant in taile a discontinuance at this day to the (Sid. 83.) issue in taile, or to him in (Ant. 301.) reversion or remainder? Whereunto it is thus anfwered,

12. E. 4. 3. (Cro. Car. 405.) (1. Roll. Abr. 632.) (Post. 356. a.)

were,

* &c. not in L. and M. nor Roh. + じん added L. and M. and Roh. # seisse not in L. and M. nor Roh. || じゃ. added L. and M. and Roh. § auters added L. and M. and Roh.

his life, only; yet, in the eye of the law, he is confidered as seised of an estate of inheritance. To understand this, it should be remembered, that, in the case of a see simple conditional at common law, the condition, from which that estate took its appellation, did not fuspend the see from vesting in the donce, immediately by the gift. Thus, we find, that, if he aliened before he had issue, it not only was no forfeiture, bur, if afterwards he had issue, it was a bar to them. See Plo. 239. 2. Inst. 333. But the condition, though it did not prevent the fee from vesting in the donce, suspended his power of alienation. To that power it was considered to be a condition precedent, that the donce should have issue born. The statute extinguished the power; but did not assect the estate of the feudatory, in any other respect: so that a tenant in tail was as much seised of the inheritance, after the statute de donis, as a tenant in fee simple conditional was, before it. Hence, if he made a feoflinent, it did not, during his life, affect or prejudice the issue. Thus his alienation was, primarily, a lawful transfer of the freehold; the alience came in by right; and his ustate could not be impeached, during the life of the donce. In conformity to the established rule of the common law, that whenever any person acquired a presumptive right of possession, his possession was not to be defeated by entry, however slender or unlawful the title of the grantor himfelf might be, the statute de donis did not absolutely nullify the alienations of the donee in tail, but enabled the issue to defeat them by the formedon in the descender.—It is generally said that the writ of mortd'ancestor was the only remedy, at the common law, for the issue, against the alienations of his ancestor, and that the formedon did not lie, till the flatute de donis. This must be understood with the two following qualisientions. 1st, A writ of mortd'ancestor could certainly be inalistatined against an abator; but, as one of the three points in that writ, to be enquired of by a jury, was, si pater wel mater fuit seisitus, or fristia, in dominico suo ut de sado, die quo obiit, it could not be maintained against a disselsor. See Booth 2071 2d. In one cafe, a formedon was certainly admitted at the common law; that was, when a man had iffue a fon, and his wife died, and he afterwards took another wife, and land was given to him and his fecond wife, and to the heirs of their two bodies begotten, and there was iffue of that marriage, and both the wife and the father died, and a ftranger abated; there, the iffue of the fecond marriage could not maintain a writ of mortd'ancestor; for one part of the writ is to enquire, si petens sit propinquior hæres, to which description no issue of the second venter could answer, while there was a son of the first venter. See Plo. 239. Booth 141. 207. Aut. 196.

(1) V. As to alienations by tenants in tail, with respect to the reversioner :-- Upon the death of tenant in see simple conditional, if the estate was withheld from the reversioner, either by the alience of the tenant in tail, or by an abator, the reversioner was entitled, at the common law, to a formedon in the reverter. It has been observed before, that if tenant in see-simple conditional at the common law aliened before he had issue, and afterwards had issue, the issue was barred by the alienation; but it does not seem clear whether the ulienation in that case barred the reversioner. See Plo. 235. Ant. 19-- In general, when the issue in tail aliened, it was with warranty i in that cale, the warranty descended upon the issue in tail, and therefore prevented his claiming against the alienation of his ancestor.

But nothing of this nature could be opposed to the reversioner (2) VI. As to discontinuances by tenants in tail, with respect to those in remainder:—It has been observed before, that all estates of Inheritance were, at common law, either fees timple abfolute, or fees timple conditional; and that tenants in fee timple conditional

18. E. 3. 12. 19. E. 3. Bre. 468. 24. E. 3. 28. 36. Aff. 8. 22. R. 2. Discon. 50. 5.E. 4.3. 4. H. 7. 17. 33.E. 3. Formdon, 47. & 13. H.7. Pl. Com. 426. Smith & Stapleton's cafe.

(3. Rep. 85.)

(1. Leo. 66.)

.{Plo. 437.)

(10. Rep. 95.)

fwered, that it is provided by the statute of W. 2. ca. 1. De donis conditionalibus, quod non babeant illi quibus tenementum sic fuerit datum potestatem alienandi, &c. Upon these words the fages of the law have construed the said Act according to the rule and reason of the common law, and that in divers and sundry variable manners. For some alienations of tenant in taile, they have adjudged voydable by the issue in taile by action only: some at the election of the issue in taile to avoid it by action, entry, or claime: some are meerely void by the death of the tenant in taile: which severall constructions were made upon the selfe-same words aforefaid.

As for example, If tenant in taile make a fooffement in fee, this drives the issue in taile, to his action, which is called in law a Discontinuance; and this construction was made, for that at the common law the feoffement of an abbot or bishop, or of the husband seised in the. right of his wife, did worke a discontinuance, and did drive the successor and the wite to their action, and foreclosed them of their entrie: and as the entrie of the issue was taken away, so consequently of them in reversion and remainder. Also if an abbot, bishop, or hulband in the right of his wife, seised of a rent, or of any other inheritance that lieth in grant, had aliened, it was in the election of the successor or wife after the death of her husband to claime the rent, &c. or to bring an action, for that alienation did not worke a discontinuance; and so it is by construction in case of tenant in taile. Lastly, if the abbot, bishop, or husband, had granted a rent newly created out of the land, &c. to another in fee, this had ut, terly ceased by their death; and so it is also by construction in case of tenant in taile. So as these words (non habent potestatem alienandi) doe worke these effects, wiz. as to lands, that a feoffment barreth not the issue, &c. of his action, but worketh a discontinuance to barre him of his entrie: as to rents or any thing in ese, that lie in grant, that the said words doe take away his power to make any discontinuance: as to rents, &c. newly created, that they take away his power to make them to continue longer than during his life.

But there is a diversitie betweene an alienation working a discontinuance of an estate which taketh away an entrie, and an alienation working, divesting or displacing of estates which taketh away no entry. As if there be tenant for life, the remainder to A. in taile, the remainder to B, in fee, if tenant for life doth alien in fee, this doth divest and displace the remainders, but worketh no discontinuance. And therein it is to be observed, that to everie discontinuance there is necessary a divesting, or displacing of the estate, and turning the same to a right: for if it be not turned to a right, they that have the estate cannot be driven to an action. And that is the reason that such inheritances as lie in grant, cannot by grant be discontinued, because such a grant divesteth no estate, but passeth onely that which he may lawfully grant, and so the estate itselfe doth descend, revert, or remaine, as shall be faid hereafter in this Chapter.

A. maketh a gift in taile to B. who maketh a gift in taile to C. C. maketh a fcoffment in fee and dieth without issue, B. hath issue and dieth, the issue of B. shall enter; for albeit the feoffment of C, did discontinue the reversion of the see simple which B, hath gained upon the estate taile made to C. yet could it not discontinue the right of intaile which B. had, which was discontinued before: and therefore when C. died without issue, then did the discontinuance of the estate taile of B. which passed by his liverie, cease, and consequently the entries of the issue of B. lawfull; which case may open the reason of many other cases.

Also note, that a discontinuance made by the husband, did take away the entrie only of the wife and her heires by the common law, and not of any other which claimed by title paramount above the discontinuance. As if lands had beene given to the husband and wife, and to a third person, and to their heires, and the husband had made a scoffment in sec, this had beene a discontinuance of the one moitie, and a disseisin of the other moitie: if the hus-. band had died, and then the wife had died, the furvivor should have entred into the whole, for hee claimed not under the discontinuance, but by title paramount from the first feossor; and seeing the right by law doth survive, the law doth give him a remedie to take advantage thereof by entry, for other remedie for that moitie he could not have.

Fee, ou fee taile. And so it is of an estate for life.

Sect. 598.

ITEM, si tenant en taile ALSO, if tenant in taile be dis-soit disseise, et il relessa per seised, and he release by his

were, after the birth of issue, permitted to allen the fee, upon a supposition, that, by the birth of issue, the condition was performed. The statute de donis declares this to be manifestly contrary to the form and intent of the gift, and therefore requires, that from thenceforth the will and intent of the donor should be observed, and the see revert to him, for want of issue. This statute did not create any new estate, but, by disassirming the supposed performance of the condition, preserved the fee to the issue, while there were issue to take it, and the reversion to the donor, when the issue failed. An estate of inheritance therefore remained in the donce; but only a particular description of heirs being intitled to take under it, it received the appellation of an estate tail, that is, an estate docked, cut off, or abridged, in contradistinction from the estate of see simple absolute, which remained in the donor, Wright's Tenures, 186. Plo. 251. The expression estate tail does not occur in the statute de donis; but it is to be found in a statute of the fame year. See Stat. West. cap. 4. The statute de donis, by thus securing the reversion to the donor, produced another material alteration in the law. For, by the common law, no remainder could be limited upon, or after, an effate in fee simple absolute or conditional; but when estates in see simple conditional were reduced to estates tail, remainders after them were permitted: and by analogy to what was done for the issue and the reversioner, a formedon in the remainder was given to the remainder-man; -not, however, expressly, but by inference.-For the remainder-man after an estate tail being by the discontinuance in the same mischief with the iffue or the reversioner in tail, an equitable construction of the statute brought him within the like remedy .-- Five years after the enacting of the statute de donis, the statute quia emptores terrarum was passed; by which all persons were enabled to dispose of their lands a but the scoffees were to hold them immediately of the chief lord. Upon this statute, the courts took the following distinction, with respect to estates tail, and other particular estates; that, where a person seised in see granted for life, or in tail, reserving the reverfion to himself, the grantees of the particular estates held of the reversioner, and he of the chief lord: but, where a person granted for life, or in tail, with the remainder over in fee, both the tenants of the particular estates, and the remainder-man, held of the chief lord. 2. Inft. 505.—Care must be taken to distinguish between a remainder limited after an estate tail, and a conditional, or contingent use, limited upon, or after such an estate. See page 203. b. note 1. and page 274. a. continuation of note 1. 271. b.—There are few occafions where greater nicety, or skill, is required, in limiting uses of this kind, than in the two following enses, -- The first is, when a person, being soised of two estates, wishes to raise two families; and with this view intends that one of the estates (which shall be called here, the family estate) shall be settled on his eldest son and his issue; and for want of such issue, on his younger sons, successively, and their respective issue, and, that the other estate (which shall be called here the second estate) shall be settled on his second son, and his issue; and for want of such issue, on his other subsequent sons, successively, and their respective issue. In this case, by the death of the eldest son without issue, the family estate would descend on the second son, or his issue. This union of the two estates would effectually defeat the fettlor's intention. To guard against it, therefore, it is necessary to provide, that, if by the death of the first son, and failure of iffue of his body, the family estate descends upon the second son, or any other younger son, or any issue of their bodies, the second estate shall, in that case, shift from the person upon whom the samily estate descends, to the person next in remainder .--The other case is, when a person limits his estate in strick settlement, with an injunction that the several persons taking under the settlement shall use his name and bear his arms. These being cases of difficulty the rules of law respecting them not having been fettled till lately; and the forms for carrying them into execution being in general very imperfect; the following observations, it is imagined, may be properly introduced here. ---- ift, As to clauses for Misting the second estate, on the accession of the family effate. From what has been fald before, it is clear, that the providees and injunctions, in these cases, are shifting or fecondary.

son fait a le disseisor et a ses deed to the disseisour and to his forsque pur terme de vie del te- sor, but for terme of the life of tenant en le taile que fist le re- nant in taile which made the release, &c.

beires tout le droit lequel il ad heires all the fight which he hath en mesme les tenements, ceo n'est in the same tenements, this is no pas discontinuance, pur ceo que discontinuance, for that nothing rien de droit passa al disseisor of the right passeth to the disseilease, &c.

Sect. 599.

MES per feoffment del te- BUT by the feoffment of te- (2. Rep. 31. nant en le taile, fee simple nant in taile, fee simple paspassa per mesme le seoffement seth by the same seossement by per force de liverie de seisin, force of the liverie of seisin,

Sect. 600.

per tenant en le taile.

MES per sorce d'un release BUT by sorce of a release no-rien passera sorsque le droit thing shall passe but the right que il poet loyalment et droitu- which he may lawfully and rightralment relesser, sans leyde ou da- fully release, without hurt or dammage as auters persons queux mage to other persons who shall ent averont droit apres son de- have right therein after his decease, &c. Issint il est graund di- cease, &c. So there is great diversity perenter un feossement d'un versitie betweene a seossement of tenant en le taile, et un release fait tenant in taile, and a release made by tenant in taile.

OUR author having put examples of estates passing by transmutation of an estate and possession, doth in this and the two Sections following put a diversitie betweene a feosiment and a release or confirmation of a bare right: for it is a rule in law, that the disseise or any other that hath a right only by his release or confirmation, cannot make any disconti- 9. E. 4. 18. 12. E. 4. 11. Leef From Eagle. nuance, because nothing can passe thereby but that which may lawfully passe. But other- 5. H. 4. 8. 21. H. 6. 58. 744 2 1/2 . wise it is of a seossiment in respect of the liverie of seisin, for that it is the most solemne and (Post 329, 330) in Contains, learn common assurance in the country, and to be maintained for the common quiet of the realme: ** Learn 25/6. 3. e. 246. 247. and by the feoffment the freehold (which is so much esteemed in law) doth passe by open liverie to the feoffee, and by the release a bare right.

Sect. 601.

luy et ses beires his heires to warran-

cest cas relessa a lease to his disseison disseisor, et oblige sor, and bind him and

MES il est dit,
que si le teif the tenant in this case maketh a dif. 43. E. 3. 8. 15. E. 4.

nant en taile en taile in this case recost relessa a lease to his disseisha is taile sha is taile sha solution. the issue in taile should en- (Fost. 632, 633.) ter, the warrantie (which is so much favoured in law) should

secondary uses; and the point now before us presents us with a curious and striking view of the gradual progress of the doctrines of our courts respecting them.—One of the most remarkable adjudications on this subject is the duke of Norfolk's case; 3d. Ca. in Cha. The case there was, that Henry earl of Arundel conveyed his estates to the use of himself for his life; and, after his decease, to the use of trustees for 200 years; and, after the expiration of that term, to the use of Henry Howard, his second son, in tail male; remainder to Charles Howard, and his other subsequent sons, successively, in tail male; with a declaration that the term of 200 years was limited in trust to attend the inheritance, so long as Thomas Howard, the settlor's eldest son, or any issue male of his body, should live; but with a proviso, that if by his death without issue male living at his decease, or by a subsequent failure of that iffue male, the earldom of Arundel should descend on the second son, then the trust should cease as to the second son, and the heirs male of his body; and the trust should then be, for the benefit of the third son, and the heirs male of his body. The eldest fon died without iffue, in the life-time of the second son; upon this, the difficulty arose. The question was, whether the executory trust for the benefit of the third son was not too remote? It is clear, that the event upon which the trust was to take effect for the benefit of the third fon, must, if it took place at all, necessarily take place within the compass of one life; it being, that by event of the death and failure of iffue of the first son in the second son's life-time, the second son should become intitled to the earldom of Arundel. The law upon this head is, now, so clearly settled, that if a settlement were to be made now to this effect, all the parties interested would immediately acquiesce in it. But it was then a point so much questioned, that sew cases have been heard in the courts, either of law or equity, in which there has been a greater difference of opinion. Lord Nottingham, before whom it was heard, was affilted by the three chief justices. His lordship held the trust to be good. But the three chief justices differed from his lordship; and his lordship's decree was afterwards reversed by lord keeper North: but the House of Lords, on appeal, reversed the reverful; and affirmed lord Nottingham's decree. Thus, by this cafe, it was following adjudged, that an executory trust of a term of years was good, if so framed as to take effect within the compass of one life in being. This reasoning extended by analogy, to executory devises of legal estates; and to all shifting and secondary uses, whether created by deed, or will.-The next advance in limitations of this nature was to extend them to a period within the compass of one or more life or lives in being, and twenty-one years after. Upon this principle was determined the case of Lloyd v. Carew, Prec. in Cha. 72. Show. Cases in Par. 137. In mast cases, till within these thirty years, the clauses in deeds or wills by which these purposes were intended to be effected were framed upon this plan; so that the event upon which the estate limited to the second son was to shift from him and his iffue to the fubfequent fons and their iffue, viz. the accossion of the family estate, was confined to the contingency of its happening within the above period of one or more life or lives in being, and twenty-one years. Afterwards, as it was observed that a common recovery fuffered by tenant in tail barred all limitations subsequent or collateral to his estate, it was concluded, that there was no necoffity to confine the event, upon which the estate was to shift, to any particular period of time; and therefore it is now usual to express it generally, that if any of the younger sons, or of the heirs male of their bodies, shall come into possession of

Cap. 11. Of Discontinuance. Sect. 602, 603.

fliould be destroyed: and therefore to the end that if assets in see simple doe descend, he to whom the refame, and barre the demandant: by which meanes all rights and advantages are faved. And that I may note

a garrantie, tet morust, tie, and dieth, and this et cest garranty dis- warrantie descend to cendist a son issue, tee his issue, this is a lease is made, may plead the est discontinuance per discontinuance, by cause de le garran- reason of the wartie I.

rantie.

it once for all, an (il est dit) with Littleton, is as good as a concessum in a booke case.

Sect. 602.

MES si un home ad issue sits BUT if a man hath issue a sonne per sa feme, et su feme mo- by his wife, and his wise dieth, sa second feme, et a les heires de and to his second wife, and to feme morust, et puis le tenant en ther sonne, and the second wife &c. et devia, ceo n'est pas discon- him and his heires to warrantie, second feme, mes il poit bien enter, nuance to the issue in taile by the Spur ceo que le garrantie discen- secondwife, but he may wellenter, dist a son eigne frere que son pier for that the warrantie descendeth

rust, et puis il prent auter seme, and after hee taketh another wife, et tenements sont dones a luy et a and tenements are given to him lour deux corps engendres, et ils the heires of their two bodies enont issue un auter sits, et le second gendred, and they have issue anole taile est disseisie, et il relessa al dieth, and after the tenant in taile disseisor tout son droit, &c. et ob- is disseised, and hee release to the lige luy et ses heires a le garrantie, disseisor all hisright, &c. and bind tinuance al issue en le taile per le &c. and die, this is no discontiavoit per le primer seme ||, &c. to his elder brother which his father had by the first wife, &c.

Sect. 603.

(8. Rep. 86.)

EN mesme le manner est, sou IN the same manner is it, where tenements sont discendable a lands are descendible to the le fits puisne solonques le custome youngest sonne after the custome de Burgh English, queux sont of Burrough-English, which are entailes, &c. et le tenant en entayled, &c. and the tenaunt in le taile ad deux sits, et est disseisse, taile hath two sonnes, and is diset il relessa a son disseisor tout seised, and he releaseth to his dis-I'm droit ove garrantie, &c. seisour all his right with warranet morust, le puisse sits poit tie, &c. and dieth, the younger enter sur le disseisor, nient ob- sonne may enter upon the disseisor, Stant le garrantie, pur ceo que le notwithstanding the warranty, for garrantie discendist al eigne that the warrantie descendeth to sits: car touts foits le garran- the elder son: for alwayes the war-

* &c. added L. M. and Roh. § &c. added L. and M. and Roh.

† dongues added L. and M. and Roh. ∥ めた not in L. and M. nor Roh. # &c. added L. and M. and Roh.

the family estate, (without limiting the period, when this happens, to any particular time) the second estate shall shift from the person so becoming intitled to the family estate, and go to the persons next intitled in remainder. An instance of this kind may be seen in an act of parliament, passed in the year 1758, intitled, "an act to enable Charles Bagot, now called Charles Chester, and his sons, to take the firname of Chester." adly, As to clauses injoining persons, to autom estates are limited in Sriet settlement, to take the name and use the arms of the settler. This, in some respects, is nicer than the sormer clause; because, in the former clause, the intention of the settlor generally is, that the second estate, upon the accession of the family estate, shall pass, not only from the person himself upon whom the family estate descends, but from his issue; but, in the case now under consideration, it generally is not the intention of the fettlor, that the iffue shall be prejudiced by the non-compliance of his parent with the condition or requisition annexed to his estate. Now suppose an estate is limited to A. for life, remainder to trustees and their heirs, during his life, to preferve the contingent remainders; remainder to A.'s fons successively in tail male, with a proviso, enjoining A. and his sons, and the heirs male of their bodies, when they become seised in possession of the estate, to take the name and bear the arms of the settlor, otherwise the estates limited to them to determine: in this case, if A. the first taker, should not comply with the condition or requisition annexed to his effate, before the birth of a fon, his effate would determine, and the contingent remainders limited to his fons would either be void, or be preserved by the limitation to the trustees. The sormer would be intirely contrary to the intention of the sottlor; the latter also would be contrary to his intention, so far, as by the words usually inserted in limitations of this nature, the person refuling to comply with the condition, would be intitled to the rents of the estate during his life; and, if shose words were not inserted, the rents, being undisposed of, would belong to the heir at law of the settlor. To prevent this, it is proper to direct, that the trustees for preferving the contingent remainders shall, after the cesser or determination of the estate for life, and during the suspence and contingency of the thon next expectant remainder, stand and be feifed of the estate limited to thom; in the first place, to preserve the contingent remainders till they come in effe; and in the next place, during the suspence of such remainder, upon trust to pay the rentato those, who would be entitled to the efface, if the persons taking under the contingent remainders then in suspence were dead. It may not, perhaps, be unacceptable to the reader to be presented with the following clauses, in which all the above circumstances seem to be attended to. It must be supposed, that the estate is previously limited to A. (a seme sole) for her life, with a power to limit a rent-charge to any person whom the may marry, for his life : with a limitation to C. and D. and their heirs during her life, to preferve the contingent remainders; remainder to her fons fucceflively in tail male; remainder to her daughters, as tenants in common in tall, with crofs remainders in tall between them; with several remainders over: then the proviso in question immediately follows: "Provided always, and it is hereby agreed and declared " between

tie discendera a celuy que est heire rantie shall descend to him who is per le common ley. heire by the common law.

BY these two examples in this and the Scction next following, it appeareth that a warrantie being added to a release or confirmation, and descending upon him that right hath to the lands, maketh a discontinuance; otherwise it is out of the reason of the law, and worketh no discontinuance, if the warrantie descendeth upon another.

Ove garrantie, &c. Here is implied that he doth binde him and his heires to

warrant to the releasee and his heires.

Touts foits le garrantie discendist sur le beire al common ley. This is a 13. H. 4. Garrantie 94. maxime of the common law, and hereof more shall be said in the Chapter of Warrantie, 19. R. 2. Gariantic 100. Sectione 718. 735, 736, 737. so as it is not the warrantie only that maketh a discontinuance, (Fost. 376. a.) but the warrantie and the discent upon him that right hath together.

Sect. 604.

ou per sa mort.

ITEM, si un abbe ALSO, if an abbot soit disseise, et il bee disseised, and relessa a le disseisor hee releaseth to the ovesque garrantie, ceo disseisor with warrann'est pas discontinuance tie, this is no discona son successor, pur ceo tinuance to his succesque rien passa per cel sor, because nothing releas forsque le droit passeth by this release que il ad durant le but the right which temps que il est abbe, hee hath during the et le garrantie est ex- time that he is abbot, pire per son privation, and the warrantie is expired by his privation, or by his death.

HE reason hereof yeeld (3. Rep. 73.) ed by Littleton is, for that the warrantie is expired by his privation or death.

Per son privation, ou per sa mort. Note, that privation is here resembled to death, and so is translation alfo. Wherein this diversitie is worthy of observation, that when a bishop, &c. make an estate, lease, grant of a rentcharge, warranty, or any other act which may tend to the diminution of the revenues of the bishopricke, &c. which should maintaine the successor, there the privation or translation of the bishop, &c. is all one with his death. But

where the bishop is patron and ordinary, and confirmeth a lease made by the parson with- Vide 29. E. 3. 16. out the deane and chapter, and after the parson dieth, and the bishop collateth another, and (Ant. 300. b.) then is translated, yet his confirmation remaineth good; for the revenues that are to main- (Dyer 356.) taine the successor are not thereby diminished. And the like diversitie doth hold in case of resignation, notwithstanding [m] the authoritie to the contrary.

[m] 29. E. 3. 16. tit. garrant. 99.

Sect. 605.

sa, &c. ove garrantie, ceo n'est seised, and he releaseth, &c. pas discontinuance a la seme, si el with warrantic, this is no disconsurvesquist son baron, mes que el tinuance to the wife, if shee surpoit enter, &c. Causa patet.

ITEM, si home seiste en droit ALSO, if a man seised in the sa seme est disseise, et il reles- right of his wife be disviveth her husband, but that she may enter, &c. Causa patet.

HIS is evident, un'esse the wife be heire to the husband (as by law she may be), and then it is a discontinuance for the cause aforesaid.

Sect.

between and by the parties to these presents, that the person or persons whom the said A. shall marry; and every person who by "virtue of the limitations hereinbesore contained, or of this proviso, or of the proviso next hereinaster contained, shall become " intitled to the possession, or to the receipt of the rents and prosits of the manors and other hereditaments hereby released, or ex-" pressed and intended so to be, shall and do, within the space of one year next after they respectively shall so marry, or so become "intitled to the possession, or to the rents and prosits of the said manors and other hereditaments as aforesaid, take upon him and them respectively, and use in all deeds, letters, accounts, and other writings, whereto or wherein they respectively shall be, or " parties, or which they respectively shall sign, the strame of Browne only, and take and use no other strame; and quarter the arms of Browne, with their own respective family arms; and also shall and do, within the space of one year next after they respectively thall to marry, or to become intitled, as aforefaid, apply, fue for, and endeavour to obtain an act of parliament, or a proper "licence from the crown, or take such other means as may be requisite or proper to enable or authorise him, or them, respectively, to take and bear the faid sirname and arms: and that, in case any such person or persons shall result or neglect to take such firname and arms, and to take and use the steps, or means, which shall be requisite or proper to enable and authorize him or them " so to do, within the said space of one year; then, if the person so refusing or neglecting shall be the husband of the said A. the Imitation hereinbefore contained, to the use of the said A. shall cease, determine, and be utterly void; and any annual sum, which by virtue of the power for that purpose hereinafter contained, the said A. shall grant, limit, or appoint, to the use of, or on trust for, or for the benefit of such husband so resusing or neglecting, and the powers, or remedies, and terms of years which she shall limit, demise or create for securing the same, shall cease, determine, and become utterly void; and that if the person so resuling, or " neglecting, that be any other than the husband of the said A. or of any of her daughters, the limitation hereinbefore " contained of the said manors and other hereditaments, to the use of him or them so resuling, or neglecting, shall cease, de-"termine, and become utterly void: and that the same manors and other hereditaments shall, in such cases, immediately thereupon go to the person next beneficially intitled in remainder, under the limitations hereinbefore contained, in the same manner as if the person or persons, whose estate shall so cease, determine, and become void, being tenant or tonants for life, was or were dead, " or being tenant or tenants in tail, was, or were dead without iffue s-without prejudice, nevertheless, to any jointure or jointures, or portion or portions, annual fum or annual fums of money, leafe or leafes, or demife or demifes, which, previous to fuch ceffer or determination, shall have been granted or demised of, or charged upon, the said manors and other hereditaments, hereby released or expressed and intended so to be, or any part thereof, in pursuance of any of the powers hereinaster contained: (except as to ony annual fum, and the powers, or remedies, and terms of years for fecuring the fame, which shall have been granted, limited, or appointed, by the said A. in pursuance hereinaster for that purpose contained.) And it is hereby further agreed and declared be-" twee i

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should be destroyed; and therefore to the end that if affets in fee simple doe descend, he to whom the release is made, may plead the fame, and barre the demandant: by which meanes all rights and advantages are faved. And that I may note

a garrantie, tet morust, tie, and dieth, and this et cest garranty dis- warrantie descend to cendist a son issue, +ceo his issue, this is a est discontinuance per discontinuance, by cause de le garran- reason of the wartie I.

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Sect. 602.

sa second feme, et a les heires de and to his second wife, and to feme morust, et puis le tenant en ther sonne, and the second wife tinuance al issue en le taile per le second feme, mes il poit bien enter, nuance to the issue in taile by the § pur ceo que le garrantie discen- secondwife, buthe may wellenter, dist a son eigne frere que son pier for that the warrantie descendeth avoit per le primer feme ||, &c.

MES si un home ad issuc sits BUT if a man hath issue a sonne per sa feme, et sa feme mo- by his wise, and his wise dieth, rust, et puis il prent auter seme, and after hee taketh another wife, et tenements sont dones a luy et a and tenements are given to him lour deux corps engendres, et ils the heires of their two bodies enont issue un auter sits, et le second gendred, and they have issue anole taile est disseisie, et il relessa al dieth, and after the tenant in taile disseisor tout son droit, &c. et ob- is disseised, and hee release to the lige luy et ses heires a le garrantie, disseisor all hisright,&c. and bind &c. et devia, ceo n'est pas discon- him and his heires to warrantie, &c. and die, this is no discontito his elder brother which his father had by the first wife, &c.

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(8. Rep. 86.)

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the family estate, (without limiting the period, when this happens, to any particular time) the second estate shall shift from the person so becoming intitled to the family estate, and go to the persons next intitled in remainder. An instance of this kind may be seen in an act of parliament, passed in the year 1758, intitled, "an act to enable Charles Bagot, now called Charles Chester, and his " fons, to take the firname of Chester." adly, As to claufes injoining persons, to autom estates are limited in Srist settlement, to take the name and use the arms of the settler. This, in some respects, is nicer than the sormer clause; because, in the former clause, the intention of the settlor generally is, that the second estate, upon the accession of the family estate, shall pass, not only from the person himself upon whom the samily cliate descends, but from his issue; but, in the case now under consideration, it generally is not the intention of the fettlor, that the iffue shall be prejudiced by the non-compliance of his parent with the condition or requisition annexed to his estate. Now suppose an estate is limited to A. for life, remainder to trustees and their heirs, during his life, to preferve the contingent remainders; remainder to A.'s fons faccessively in tail male, with a proviso, enjoining A. and his sons, and the heirs male of their bodies, when they become seiled in possession of the estate, to take the name and bear the arms of the settlor, otherwise the chates limited to them to determine: in this case, if A. the first taker, thould not comply with the condition or requisition annexed to his estate, before the birth of a son, his estate would determine, and the contingent remainders limited to his sons would either be void, or be preferved by the limitation to the trustees. The former would be intirely contrary to the intention of the fettlor; the latter also would be contrary to his intention, so far, as by the words usually inserted in limitations of this nature, the person refuling to comply with the condition, would be intitled to the rents of the effate during his life; and, if those words were not inserted, the rents, being undisposed of, would belong to the heir at law of the settlor. To prevent this, it is proper to direct, that the trustees for preferving the contingent remainders shall, after the cesser or determination of the estate for life, and during the suspence and contingency of the then next expediant remainder, stand and be seised of the estate limited to them; in the first place, to preserve the contingent remainders till they come in effer and in the next place, during the suspence of such remainder, upon trust to pay the rentato those, who would be entitled to the estate, if the persons taking under the contingent remainders then in suspence were dead. It may not, perhaps, be unacceptable to the reader to be presented with the following clauses, in which all the above circumstances seem to be attended to. It must be supposed, that the estate is previously limited to A. (a seme sole) for her life, with a power to limit a rent-charge to any person whom the may marry, for his life : with a limitation to C. and D. and their heirs during her life, to preferve the contingent remainders; remainder to her fons fuccessively in tail male; remainder to her daughters, as tenants in common in tail, with crofs remainders in tail between them; with several remainders over: then the proviso in question immediately follows: "Provided always, and it is hereby agreed and declared " between

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warrant to the releasee and his heires.

Lib. 3.

Touts foits le garrantie discendist sur le beire al common ley. This is a 13. H. 4. Garianti-94. maxime of the common law, and hereof more shall be said in the Chapter of Warrantie, 19. R. 2. Gar antic 100. Sectione 718. 735, 736, 737. so as it is not the warrantic only that maketh a discontinuance, (Fost. 376. a.) but the warrantie and the discent upon him that right hath together.

Sect. 604.

ou per sa mort.

soit disseise, et il bee disseised, and relessa a le disseisor hee releaseth to the ovesque garrantie, ceo disseisor with warrann'est pas discontinuance tie, this is no discona son successor, pur ceo tinuance to his succesque rien passa per cel sor, because nothing releas forsque le droit passeth by this release que il ad durant le but the right which temps que il est abbe, hee hath during the et le garrantie est ex- time that he is abbot, pire per son privation, and the warrantie is expired by his priva-

TEM, si un abbe ALSO, if an abbot THE reason hereof veeld (3. Rep. 73.) that the warrantie is expired by his privation or death.

Per son privation, ou per sa mort. Note, that privation is here resembled to death, and so is translation also. Wherein this diversitie is worthy of observation, that when a bishop, &c. make an estate, lease, grant of a rentcharge, warranty, or any other act which may tend to the diminution of the revenues of the bishopricke, &c. which should maintaine the successor, there the privation or translation, or by his death. tion of the bishop, &c. is all one with his death. But

where the bishop is patron and ordinary, and confirmeth a lease made by the parson with- Vide 29. E. 3. 16. out the deane and chapter, and after the parson dieth, and the bishop collateth another, and (Ant. 300. b.) then is translated, yet his confirmation remaineth good; for the revenues that are to main- (Dyer 356.) taine the successor are not thereby diminished. And the like diversitie doth hold in case of resignation, notwithstanding [m] the authoritie to the contrary.

[m] 29. E. 3. 16. tit. garrant. 99.

Sect. 605.

sa, Ec. ove garrantie, ceo n'est seised, and he releaseth, &c. pas discontinuance a la seme, si el with warrantie, this is no disconsurvesquist son baron, mes que el tinuance to the wife, if shee surpoit enter, &c. Causa patet.

ITEM, si home seisie en droit ALSO, if a man seised in the sa feme est disseise, et il relesright of his wife be disviveth her husband, but that she may enter, &c. Causa patet.

HIS is evident, un'esse the wife be heire to the husband (as by law she may be), and then it is a discontinuance for the course of the husband. then it is a discontinuance for the cause aforesaid.

Sect.

between and by the parties to these presents, that the person or persons whom the said A. shall marry; and every person who by "virtue of the limitations hereinbefore contained, or of this proviso, or of the proviso next hereinaster contained, shall become intitled to the possession, or to the receipt of the rents and profits of the manors and other hereditaments hereby released, or ex proffed and intended to to be, shall and do, within the space of one year next after they respectively shall so marry, or so become intitled to the possession, or to the rents and profits of the faid manois and other hereditaments as aforesaid, take upon him and "them respectively, and use in all deeds, letters, accounts, and other writings, whereto or wherein they respectively shall be, or " parties, or which they respectively shall sign, the firname of Browne only, and take and use no other straame; and quarter the arms of Browne, with their own respective family arms; and also shall and do, within the space of one year next after they respectively thall so marry, or so become intitled, as aforesaid, apply, sue for, and endeavour to obtain an act of parliament, or a proper "licence from the crown, or take such other means as may be requisite or proper to enable or authorise him, or them, respectively, " to take and bear the faid firmane and arms: and that, in case any such person or persons shall refuse or neglect to take such " sirname and arms, and to take and use the steps, or means, which shall be requisite or proper to enable and authorize him or them " so to do, within the said space of one year; then, if the person so refusing or neglecting shall be the husband of the said A. the limitation hereinbefore contained, to the use of the said A. shall cease, determine, and be utterly void; and any annual sum, which " by virtue of the power for that purpose hereinaster contained, the said A. shall grant, limit, or appoint, to the use of, or on trust for, " or for the benefit of fuch husband so refusing or neglecting, and the powers, or remedies, and terms of years which she shall limit, " demise or create for securing the same, shall cease, determine, and become utterly void; and that if the person so resuling, or " neglecting, thall be any other than the hutband of the faid A, or of any of her daughters, the limitation hereinbefore "contained of the said manors and other hereditaments, to the use of him or them to resulting, or neglecting, shall cease, de-"termine, and become utterly void; and that the fame manors and other hereditaments shall, in such cases, immediately thereup-" on go to the person next beneficially intitled in remainder, under the limitations hereinbefore contained, in the same manner as if "the person or persons, whose estate thall so cease, determine, and become void, being tenant or tenants for life, was or were dead, " or being tenant or tenants in tail, was, or were dead without iffue ; --without prejudice, neverthelefs, to any jointure or jointures, portion or portions, annual fum or annual fums of money, leafe or leafes, or demife or demifes, which, previous to fuch ceffer " or determination, thall have been granted or demifed of, or charged upon, the faid manors and other hereditaments, hereby releafed or expressed and intended so to be, or any part thereof, in pursuance of any of the powers hereinaster contained: (except as to "any annual fum, and the powers, or remedies, and terms of years for tecuring the fame, which thall have been granted, limited, or appointed, by the faid A. in pursuance hereinafter for that purpose contained.) And it is hereby further agreed and declared be-

Lib. 3. Cap. 11. Of Discontinuance. Sect. 606, 607, 608.

Sect. 606.

(1. Saun. 161.)

ITEM, si tenant en taile de ALSO, if tenant in tayle of cer-certaine terre lessa mesme taine land letteth the same

la terre a un auter pur terme land to another for terme of des ans, per force de quel le lesse yeares, by force whereof the lesen eit possession, en quel posses- see hath thereof possession, in whose sion le tenant en taile per son fait possession the tenant in tayle by relessa tout le droit que il avoit en his deed releaseth all the right mesime le terre, a aver et tener a le that he hath in the same land, to lesse et a ses heires a touts jours; have and to hold to the lesse and ceo n'est pas discontinuance, mes to his heires for ever; this is no apres le decease le tenant en taile, discontinuance, but after the deson issue poit bien enter, pur ceo cease of the tenant in tayle, his is. que per tiel release riens passa sue may well enter, because by forsque pur terme de * la vie de such release nothing passeth but le tenant en le taile. for terme of the life of the tenant in tayle.

CAR per tiel releas riens pasa. Here is one of the maximes of the common law rehearfed by our author, whereof he doth put divers examples hereaster.

Sect. 607.

(3. Rep. 85. b.)

EN messine le manner est, si IN the same manner it is, if the terme de sa vie, &c. of his life, &c.

le tenant en le taile consir- tenant in tayle consirme the ma l'estate le lesse pur terme des estate of the lessee for yeares, to ans, a aver et tener a luy et a ses have and to hold to him and to his keires, cco n'est pas discontinu- heires, this is no discontinuance, ance, pur ceo que riens passa per sor that nothing passeth by such tiel confirmation forsque l'estate confirmation but the estate which que le tenant en le taile avoit pur the tenant in tayle hath for terme

(Ant. 328)

PIENS passa per tiel confirmation. Here is another of the maximes of the common law rehearfed by our author, whereof he putteth examples hereafter. More thail be faid hereof in the next Section following.

Sect. 608.

ITE M, si tenant en taile apres ALSO, if tenant in taile after such tiel leas granta le reversion en lease grant the reversion in see

fee per son sait a auter, et voile by his deed to another, and will-

que

• la-son, L. and M. and Roh.

[&]quot;tween, and by, the parties to these presents, that the cesser or determination of the estate of the said A., or of any other tenant for life, by force of the provide hereinbefore contained, shall not operate to exclude, prevent, or prejudice, any of the contingent remainders hereinbefore limited to her, his, or their ton or fons, daughter or daughters, or any other person or persons; but that the temainder "limited to the faid G and D, and their heus during the life of the faid A., or fuch other tenant for life, thall, after fuch ceffer or determination, take effect, and continue, for preferving fuch contingent remainders, and giving them effect at they may mife. And that "immediately from and after such cesser or determination of such preceding estate for life, and during the suspence and contingency " of such then expectant remainder, the said C. and D., their heirs and affigns, thall receive, pay and apply the rents and profits of the " faid manors and other hereditaments, which would belong to fuch tenant for life, if fuch celler or determination had not taken place, " unto the person or persons, for the intents and purposes, and in the manner, to, for, and in which, the same tents and profits would " be, or would have been payable and applicable respectively, under and by virtue of the limitations and provisors herein before con-"tained, in case such tenant for life was actually dead; so that immediately from and after such cesser or determination, the issue " of the faid A., or of fuch other tenant for life, intitled for the time being, under the limitations aforefuld, to the faid manors and other hereditaments, in remainder immediately expectant on the decease of the flid A., or of such other tenant for life, may be intitled to the rents and profits of the faid manor and other hereditaments, for his and their own proper use and benefit respectively, during the life of the parent, as it fuch parent were dead; and that in case no such issue be in existence, then, during the vacuncy or " contingency of fuch iffue, the person next intitled for the time being, under the limitations aforesaid, to a vested remainder in the faid manors and other heredicaments, expectant on the decease of the said A., or of such other tenant for life, and sailure of such "iffue of her, or his body, shall and may be entitled to the said rents and profits for his and their proper use and benefit respectively, "but without any exclusion of, or prejudice to the estate, interest, or right of any such issue, afterwards coming into existence, but " only from the time of the birth of fuch issue respectively."

forsque pur terme de sa vie, &c. his life, &c.

que apres le terme fine, que mesme eth that after the terme ended, le terre remaindroit a le grantee that the same land shall remaine to et a ses heires a touts jours, et le the grantee and his heires for ever, tenant a terme d'ans atturna, ceo and the tenant for yeares attorne, n'est pas discontinuance. Car tiels this is no discontinuance. Forsuch choses queux passont en tiels cases things which passe in such cases of de tenant en le taile tantsolement tenant in taile only by way of per voy de graunt, ou per con- grant, or by confirmation, or by sirmation, ou per tiel release, rien such release, nothing can passe to poit passer pur faire estate a celuy make an estate to him to whom a que tiel graunt, ou confirma- such grant, or confirmation, or retion, ou release, est fait, forsque lease, is made, but that which the ceo que le tenant en taile poit tenant in taile may rightfully droiturelment faire, * et ceo n'est make, and this is but for terme of

Sect. 609.

CAR si jeo lessa terre a un home FOR if I lett land to a man for (Ant. 251. b.)
pur terme de sa vie, &c. et le terme of his life, &c. and the tiel grant, forsque estate que le the grantor hath, &c. (1) grantor avoit, Ec.

tenant a terme de vie lesse mesme tenant for life letteth the same la terre a un auter pur terme des land to another for terme of years, ans, &c. et puis mon tenant a &c. and after my tenant for life terme de vie graunta le reversion grant the reversion to another in a un auter en fee, et le tenant a fee, and the tenant for yeares atterme des ans atturna, en cest case torne, in this case the grantee le grantee + n'aden le franktene- hath in the freehold but an estate ment sorsque ‡ estate pur terme for terme of the life of his grantor, de vie son grauntor, Sc. et jeo que &c. and I which am in the resuis en le reversion de fee simple, version of the fee simple may not ne puisse enter per force de cel enter by force of this grant of the grant del reversion fait per mon reversion made by my tenant for tenant a terme de vie, pur ceo life, for that by such grant my reque per tiel grant mon reversion version is not discontinued, but aln'est pas discontinue, mes tout wayes remaines unto me, as it was temps demurt a moy, sicome il before, not withstanding such grant fuit adevant, nient obstant tiel of the reversion made to the grangrant del reversion fait al gran- tee, to him and to his heires, &c. tee, a luy et a ses beires, &c. pur because nothing passed by sorce ceo que riens passa per force de of such grant, but the estate which

Sect.

" et éco n'est-de est, L. and M. and Roh.

+ x'.id-ads, L. and M. and Roh.

I flate not in L. and M. nor Roh.

ORJY

⁽¹⁾ VII. As to the modes of conveyance which work a discontinuance, it may be laid down as a general rule, that no alienation which is not made by livery of feifin, or what is equivalent to it, can work a discontinuance. It has been observed before, that the usual mode of conveyance at the common law, was a scoffment; that feofinents were formerly made without writing; and that when writing came into use, the transmutation of the property was esselled, not by the writing, but by the livery which it nurbenticated. Apue is often defined to be a feofiment upon record, the conufor's acknowledgment upon record of the right of the conufec to the lands, being confidered as taptamount to actual livery. The fines, therefore, which are faid to be executed, in contradiffinction from those which are faid to be executory, give the conufec the immediate possession of the land; and those which are called executory, enable him to recover it immediately, by an habere facias feismam .- A common recovery is the judgment of a court of record, that the demandant shall recover against the tenant; upon which he may immediately suc out the habere facial seismam. Considering, therefore, fines and recoveries only as common affurances, the acknowledgment upon record in the former, and the judgment to recover in the latter, are supposed to equiposse the notoriety of livery. Hence, both a sine and a common recovery are of sorce to work a discontinuance. With respect to releases,—where the person whose estate is discontinued, releases to the alience, his release must be considered as operating pur mitter le droit. Now, it has been observed in a former place, that releases by persons disseised, may be made either to the disseisor, his feoffee, or his heir; and that in all these cases, the possession is in the release, the right in the releasor; and that the union of the right to the possession completes the title of the release, the notoriety of the disseifin countervailing the livery. But this can only be understood of those cases where the releasor has the fee simple. In both cases the possession of the disseisor is equally notorious; but where the releafor, as in the instance brought by Littleton, has only a partial estate in the lands, he has not in him the right of possession, and cannot, of course, transfer, or code it to another. Hence, though the release of a disselse, who before the diffeifin was seifed in fee-simple, completes the tide of the diffeifor; the release of a diffeifee, who before the diffeifin had

Lib.3.

Cap. 11. Of Discontinuance. Sect. 610, 611, 612.

Sect. 610.

(Ant. 303, 319.)

de le tenant a terme de vie, &c. the tenant for life, &c.

EN mesme le maner est, si le IN the same manner is it, if te-tenant a terme de vie per nant sor terme of lise by his son fait confirme l'estate son les- deed confirme the estate of his see pur terme des ans, a aver et lessee for yeares, to have and to tener a luy et a ses heires, ou re- hold to him and his heires, or relessa a son lesse et a ses beires, lease to his lessee and his heires. uncore le lesse a terme d'ans n'ad yet the lesse for yeares hath an estate forsque pur terme de vie estate but for terme of the life of

CAR tiels choses que passont en tiels cases de tenant en le taile, &c. Here is rehearsed another ancient maxime of the common law touching grants; and hereby it appeareth that a feoffment in fee (albeit it be by parol) is of a greater operation and estimation in law, than a grant of a reversion by deed, though it be inrolled, and attornement of the lessee for yeares of a release, or a confirmation by deed, for the reasons aforesaid. And this is manifested by the examples which our author here in these three Sections putteth.

Sect. 611.

(Pan 367. a.)

of the livery, yet is it a disseisin to the lessor. author faith, that teeth, that the feoffer d'ans, &c. may thereunto annex a warrantie, whereupon the feoffee may vouch him: but of this you shall reade more in the Chapter of Warranties, Sect. 698.

HORSQUE ef- MES auterment est BUT otherwise it is tate pur terme quant tenant a when tenant for life d'ans, &c. Here it is terme de vie fait un maketh a feoffment in implied, that albeit the feoffment en fee, car per fee, for by such a feofffeoffment made by lessee soryeares be a scoss- tiel seessiment le see ment the see simple pasment between the feof- simple passa. Car te- seth. For tenant for for and feossee, and that bythis feossment the fee nant a terme d'ans poit yeares may make a feossfsimple passeth by force faire feoffment en fee, ment in fee, and by his et per son feofsment le feossment the see simple And here it is worthy fee simple passera, et shall passe, and yet he to be observed, that our uncore il n'avoit al had at the time of the nantsorterme of yeares temps del feossment fait seossment made but an may make a feoffment; for sque estate pur terme estate for terme of yeares, whereupon it follow-

Sect. 612.

ITEM, sitenant en le taile gran- ALSO, if tenant in taile grant his ta son terre a un auter pur land to another for terme of terme de vie de mesme le tenant the life of the said tenant in taile, en taile, et livrer a luy seisin, &c.et and deliver to him seisin, &c. and apres per son sait il relessa a le after by his deed hee releaseth to tenant et a ses beires tout le the tenant and to his heires all the droit

(1) What possession is required in the feossor to make his feossment an astual disserbe of the freehold; - not merely a disserbe, which is such at the election of the party; has been, of late, a subject of much discussion; and it is therefore supposed, that the following attempt at a full investigation of the very abstruce, but not uteless, learning upon the subject, will not be unac-

only an effate tail, does not complete his title, and therefore does not amount to a discontinuance -- With respect to convergences which operate by the flatute of uses; it is clear that there cannot be a discontinuance, where the possession remains with the nty; for, in those cases, the possession is not disturbed, nor can there be any livery of seisin, or any thing tantamount to it;—but it is equally clear, that if the ules are raifed by a transmutation of the possession, that transmutation may produce a discontinuance. This, in fact, is only repeating what has been observed before; for it is not the creation or limitation of the use, but the operation upon the possession, that produces the discontinuance. - Upon these grounds, therefore, a bargain and fale, a covenant to stand seised, and a lease and release, cannot work a discontinuance; but a scossinent executed, a sine levied, or a recovery suffered of ules, have that power. See page 275, contin. of note, 271. h. - But if a warranty is annexed to a bargain and fale, covenant to fland feifed, or releafe, it may produce a difcontinuance. This will be better underflood after peruling our author's chapter on Warranty. At present it is sufficient to observe, from lord chief-baron Gilbert's Ten. 120. that a release with warranty works a discontinuance; - for at common law the warranty was a voluntary coven at of the force of a sendal contract, repelling the warrantor from claiming the land, and oblighing him to defend it; and though the flature takes away the force of fuch covenants, that they shall not bar the dine, yet the iffice must claim in the method the statute prescribes, viz. by action; and, therefore, it works a discontinuance, since the issue, in such case, cannot recontinue but by action only.

Libez-Of Discontinuance. Sect. 61.3, 61.4.

ter ou relesser: * issint que per tiel so as by this release no right pasreleas nul droit passa, entant seth, inasmuch as his right was que son droit fuit ale adevant. gone before.

droit que il avoyt en mesme la right which hee hath in the same, terre; en cest cas l'estate del tenant land; in this case the estate of the de la terre n'est pas enlarge per tenant of the land is not enlarged force de tiel releas, pur ceo que by force of such release, for that quant le tenant avoit l'estate en when the tenant had the estate in le terre pur terme de vie de le te- the land for terme of the life of nant en le taile, donque il avoit the tenant in taile, hee had then all tout le droit que le tenant en le the right which tenant in taile taile puissoit droiturelment gran- could rightfully grant or release:

Sect. 613.

forsque pur terme de sa vie demesne, terme of his owne life only, ಟೆc.

ITEM, si tenant en le taile per son fait grant a un auter deed grant to another all his tout son estate que il avoit en les estate which hee hath in the tenetenements a luy tailes, a aver et te- ments to him entailed, to have ner tout son estate al auter, et a and to hold all his estate to the o- (1. Saund. 26. 3. Rep. 84.)
ses beires a touts jours, et deli- ther, and to his heires for ever, and vera a luy seisin accordant; en deliver to him seisin accordingly; cest cas le tenant a que l'aliena- in this case the tenant to whom tion fuit fait, n'ad auter estate the alienation was made, hath no forsque pur terme de vie del te- otherestatebut sorterme of the life nant en taile. Et issint il poit bien of tenant in taile. And so it may estre prove, que le tenant en taile bee well proved, that tenant in ne poit pas graunter ne aliener, taile cannot grant nor alien, nor ne faire ascun droiturel estate de make any rightfull estate of freefranktenement a auter person, hold to another person, but for &c. (1)

HE meaning of Littleton in both these cases, in this and in the Section next prece- (Post. 342. b. 345. a. Ant. 253. b.) ding is, that having regard to the issue in taile, and to them in reversion or remainder, tenant in taile cannot lawfully make a greater cstate than for terme of his life; and therefore this release or grant is no discontinuance. But in regard of himselfe, this release or grant leaveth no reversion in him, but puts the same in abeiance, so as after this release or 13. H. 7. 10. a. grant made he shall not have any action of waste, &c.

Grant tout son estate. Vid. Sect. 650. Action of waste, &c. there is implied that he shall not enter for a forfeiture, if after the release or grant the lessee maketh a feostment in fee.

Brooke Release, 95.

Sect. 614.

CAR si jeo done FOR if I give land to terre a un a man in taile, savbome en taile, savant ing the reversion to my

HERE Littleton proveth, that the feoffice of tenant in taile hath no rightfull estate, having respect

W &'c. added L. and M. and Roh.

(1) The livery, in this case, is secundum formam chartæ; and therefore, according to Sir Edward Coke's doctrine, ante 48, a, its operation and effect are restrained to the quantity and quality of the effectual estate contained in the deed. Thus, says he, if a man makes a leafe for years by deed, and delivers feitin according to the form and effect of the deed, yet he has but an effate for years, and the livery is void. The expression in the text, that tenant in tail cannot grant, or alien, or make any rightful estate of freehold to another person, but for the term of his own life, is not to be understood literally, that the grantee has but an estate for life, and that his estate is if fo facto determined by the death of the tenant in tail: all that is meant by it is, that his estate is certain and indefeasible, no longer than the life of the tenant in tail; for that, upon the death of the tenant in tail, it is defeatible by the iffue, either by action, or by entry or claim on the land, at his election. Still it has a continuance till it is so descated by the ishe. In note it anto 326, b. it has been explained upon what Principle, in the case of a tenant in tail conveying by scossment, it was held, that the statute de donis did not absolutely nullify the alienation, but only took away the entry of the islue, and reduced him to his remedy by formedon. Upon similar principles, in the case of a tenant in tail conveying by bargain and fale, release, covenant to stand scited, or any other mode of conveyance operating by way of grant, it has been held, that the flatute does not nullify the conveyance, but reduces the issue in tail to his entry; or, if he presert it, to his action, to avoid it. Thus, the grantee bath a base see; his wife is entitled to her dower during the continuance of the see; and if the grantee commits walle, the tenant in tail, having no reversion, has no right of action against him. 3. Rep. 84. b. 10. Rep. 96. See Machel v. her horse Clarke, 2. Salk. 619. Farrersley 18. Com. 119. Lord Raym. 778. Goodright on the demise of Tyrrell v. Mead and Shiston. 3. Burr. 19. Burr. 1903. The passinge, therefore, in Littleton must be understood in this qualified sense, otherwise it is inaccurate. This was observed by lord chief-justice Holt in the case of Machel v. Clarke, and by lord chief-justice Hobart in the case of Shesheld v. Ratcliss, Hob. Rep. 338, 339. - 1-1-1-1 [1. Fiers]

coptable to the reader. By the doctrine of the feudal law, no person who had an estate of less duration and extent than for his own life, in the second of the feudal law, no person who had an estate of less duration and extent than for his own life, in the second of the feudal law, no person who had an estate of less duration and extent than for his own life, in the second of the feudal law, no person who had an estate of less duration and extent than for his own life, in the second of the feudal law, no person who had an estate of less duration and extent than for his own life, in the second of the feudal law, no person who had an estate of less duration and extent than for his own life, in the second of the feudal law, no person who had an estate of less duration and extent than for his own life, in the second of the feudal law, no person who had an estate of less duration and extent than for his own life, in the second of the feudal law, no person who had an estate of less duration and extent than for his own life, in the second of the second of the feudal law, no person who had an estate of less duration and extent than for his own life, in the second of t or for the life of another man, was considered to be a freeholder; and none but a freeholder was considered to have the possession, of the life in the life of another man, was considered to be a freeholder; and none but a freeholder was considered to have the possession, of the life in the life of another man, was considered to be a freeholder; and none but a freeholder was considered to have the possession, of the life in the life of another man, was considered to be a freeholder; and none but a freeholder was considered to have the possession, of the life in the life of another man, was considered to be a freeholder; and none but a freeholder was considered to have the possession, of the life in the life of another man, was considered to be a freeholder; and none but a freeholder was considered to have the possession of the life in the life of an table of the life in the life of an table of the life in the life of an table of the life in the life of an table of the life of the land. It is true, that chates were fometimes held for terms of years. In that cafe, the possession of the termor was considered to be the possession of the freeholder;—but still the termor hold the possession, the held it for the freeholder; and the freeholder, by trusting the fee termor with it, exposed himself to lose it, by the termor's possession as a feet of the freeholder; and the freeholder, by trusting the feet of th the termor with it, exposed himself to lose it, by the termor's negligence or treachery. If the termor left the possession vacant; if he per-

Zan Company - County de .. Bear affirmed dependent forthe

the government for the fire of the continue of

(F. N. B. 211. b.)

[n] Bract. li. 4. fol. 238.

Flet. lib. 5. cap. 11.

Bract. & Flet. ubi supra.

[o] Mir. cap. 2. fect. 25. (5. Rep. 85. 2. Inst. 350.)

Westm. 2. cap. 4

respect to two persons; the one is to the donor, whose reversion is divested and displaced; and the other to the issue in taile, who is driven to his action to recover his right.

A tort luy deforce. [n] Deforciare is a word of art, and cannot be expressed by any other word; for it fignifieth, to with hold lands or tenements from the right owner; in which case either the entrie of the right owner is taken away, or the deforceor holdeth it so fast, as the right owner is driven to his reall præcipe, wherein it is said, unde A. eum injuste deforceat, or the deforceor so disturbeth the right owner, as he cannot enjoy his owne: and therefore it is said, Per boc autem qued dicitur in brevi ultimæ præsentationis deforceant, videtur quibusdam quod querens innuat per hoc quod deforceans fit in seisina, sicut in brevi de recto, sed reverâ non est ita, sed satis deforceat qui possessorem uti seisina non permiserit omnind wel minus commode impediat præsentando, appellando, impetranpas droiturel estate.

le reversion a moy, et selfe, and after the tepuis le tenant en le nant in taile infeoffeth taile enfeoffa un au- another in fee, the ter en fee, le feoffee feoffee hath no rightn'ad pas droiturel full estate in the teneestate en les tenements ments for two causes. pur deux causes. Un One is, for that by est, pur ceo que per such seoffement my tiel feoffment ma re- reversion is discontiversion est discontinue, nued, the which is a le quel est a tort fait, et wrong and not a nemy a droit fait. Un rightfullact. Another auter cause est, si le cause is, if the tenant tenant en taile mo- in taile dieth, and his rust, et son issue suist issue bring a writ of briefe de formedon formedon against the envers le feoffie, le seoffee, the writ and briefe dirra, et auxyle also the declaration count, &c. que le feof- shall say, &c. that fee a tort luy deforce, the feoffee by wrong &c. Ergo s'il a tort himdeforces,&c. Ergo luy deforce, &c. il n'ad if he deforceth him by wrong, he hath no right estate.

do, secundum quod dicitur de disseistore, satisfacit disseisnam, qui uti non permist possessorem wel minus commode licet omnino non expellat. In this case that Littleton putteth, the discontinuce being in by wrong, is no disseisor, abator, or intrudor, but a deforceor; and hereof commeth Deforcement, and thus did autiquitie describe it : [o] Deforcement, come si ascun enter en auter tenement tant come le veray seignior est al market, ou ailors, et retorne, et ne poet aver entre eins est celuy deforce et debotue. And for that at the first the withholding was with violence and force, it was called a deforcement of the lands or tenements; but now it is generally extended to all kinde of wrongfull withholding of lands or tenements from the right owner. There is a writ called a quod ei deforceat, and lieth where tenant in taile, or tenant for life, loseth by default, by the statute he shall have a quòd ei deforceat against the recoveror, and yet he commeth in by course of law. (1)

sect. 615.

voile graunter son remainder a un auter en fee per son fait, et le ceo n'est pas discontinuance de le the remainder. remainder *.

ITEM, si terre soit lesse a un home pur terme de sa vie, le remainder a un auter en mainder to another in taile, if he le taile, si celuy en le remainder in the remainder will grant his remainder to another in fee by his deed, and the tenaunt for life attenant a terme de vie atturna, torne, this is no discontinuance of

Scct.

• Oc. added L. and M. and Roll.

(1) Sir William Blackstone, in his account of a deforcement, 3. Com. c. 10. observes, that it is nomen generalissimum; being a much larger and more comprehensive expression than any of the former, and signifying the holding of any lands or tenements to which another person has a right; so that it includes as well an abatement, an intrusion, a disseitin, or a discontinuance, as any other species of wrong whatfoever, whereby he that hath a right to the freehold is kept out of possession. But, as contradistinguished from the former, it is only fuch a detainer of the freehold from him that hath the right of property, but never had any possession under that right, as falls within none of those injuries. A desorcement may also be grounded on the non-performance of a covenant real : as if a man seised of lands covenants to convey them to another, and neglects or refutes to to do, but continues possession against him, this possession being wrongful is a deforcement. And hence, in levying a fine of lands, the person against whom the sicitious action is brought upon a supposed breach of covenant, is called a deforceant. Monf. Houard, Anc. Loix des Francois, tom. 1. p. 654. mentions, that Du Cange refers to the laws of Alfred and other kings of England precedent to the Conquett, for an explanation of the word Deforcement; but that he ought to have observed, that it was not introduced into the Latin translation of those laws till after the introduction of the Norman customs into England; . that deforce is an old French word, and that fortia is taken for force in the 28th formula of Marculphus.

affirmed it to be in a firanger 1-in all these cases, the freeholder exposed himself to the loss of the possession, as much as if they were his own nets. Thus the termor held the possession, but he was said to hold it nomine alieno, in contradistinction to the freeholder himself, who was faid to hold it nomine proprio. Hence Britton expressly defines an estate of freehold to be " the pollession of the soil by the "freeholder:" and the author of the Doctor and Student tays, "that the possession of the land is called in the law of England the franktenement or freehold." Britt. C. 52. Doct. and Stud. h. 2. d. 22. So nearly synonimous in those days was the possession to the freehold. In this manner, the possession of the termor distered from that of a mere bailist, who had no possession. The same principles obtained with respect to the transfer of the freehold. Nothing further was necessary than a delivery of the possession, or, as it is called by our law-writers, livery of seisin. The freehold could be transferred by no other means. But here a difference is to be observed with respect to the essect of the livery of a termor for years (such as was mantioned before), and the livery of a more bailiff. On account of the folcomity, upon which the entry of the termor into the lands was grounded; the connection between him and the reversioner, and his actually holding the possession of the land (though he held it for the freeholder), the livery of the former was a transfer of the possession; but the livery of the latter was absolutely without effg.A.

Sect. 616,

Ec.

I.TE M, si home ad rent ser- ALSO, if a man hath a rent ser-vice ou rent charge en taile, vice or rent charge in taile, et il granta le dit rent a un au- and hee grant the sayd rent to ter en fee, et le tenaunt attorna, another in fee, and the tenaunt * ceo n'est pas discontinuance, attorne, this is no discontinuance, &c.

grosse, ou de un common en grosse, s'il per son fait voile graunt l'advowson ou le common a un auter en fee, ceo n'est pas discontinuance; car en tielx cases les grantees vie de le tenant en taile que fist le grant, &c.

1TEM, si home soit tenant ALSO, if a man bee tenaunt in en taile de un advowson en taile of an advowson in grosse. or of a common in groffe, if he by his deed will graunt the advowson or common to another in fee, this is no discontinuance; for in fuch cases the grauntees have n'ont estate forsque pur terme de no estate but sor terme of the life of tenant in taile that made the grant, &c.

BY the cases in these three Sections it appeareth, that if a remainder or a rent service, Brack. 1. 2. s. 3. & f. 366. 378. or a rent charge, or an advowson, or a common, or any other inheritance that Brit. s. 187. Mir. ca. 2. sect. 17. lieth in grant, be granted by tenant in taile, it is no discontinuance, as formerly hath beene Flet. lib. 3. ca. 15. faid.

[p] Note, here is an advowson named by Littleton, as a thing that lieth in grant, and [p] 5. E. 3. 58. 21. E. 3. 37 38. paffeth not by liverie of feisin.

(Post. 335.)

43. E. 3. 1. b. 11. H. 6. 4. 5. H. 7. 37. 18. H. 8. 16. El. Dy. 323. b.

tiels choses que fuch things as pussiont per voy de passe by way of grant, graunt, per fait fait en by deed made in the pays, + et sans li- countrie, and withvery, la tiel graunt out livery, there such ne fait pas disconti- grant maketh no dismuance, come en les continuance, as in the cases avantdits, tet en cases aforesayd, and in auter cases semblables, other like cases, &c. &c. || Et coment Andalbeitsuch things que tiels choses sont bee graunted in see, graunts en fee, per by fine levied in the sine levie en le court king's court, &c.

ET nota, que de AND note, that of HERE is the generall precedent cases and the like; for that it is a maxime in law, that a grant [d] by deed of such things [d] 6. E. 3. 56. 32. E. 3. as doe lie in grant, and Discont. 5. 33. Ass. 8. 4. H. 7. 17. not in liveric of seisin, doe 21. H. 7. 42. 15. H. 7. 19. worke no discontinuance. (1) 21. E. 4. 5. 22. R. 2. But the particular reafon is, Dilcon, 56. 38. 11. 8. for that of fuch things the Difcon, 35. Brooke, 19. E. 3. grant of tenant in taile Bro. 168. Pl. Com. 435 worketh no wrong, either to 18. All. p. 2. the issue in taile, or to him in reversion or remainder; for nothing doth paffe but onely during the life of tenant in taile, which is lawfull, and every discontinuance worketh a wrong, as hath beene faid.

* &c. added L. and M. and Roh. || Et not in L. and M. nor Roh.

+ of funs livery, la-&c. lon, L. and M. and Roh.

ct en-ou, L. and M. and Roh!

[q] If

(1) VII. That nothing which lies in grant can be faid to be discontinued .- The term discontinuance is used to distinguish those cases where the party, whose freehold is ousted, can restore it by action only, from those in which he may restore it by entry. Now, things which lie in grant, cannot either be divelted or restored by entry. The owner, therefore, of any thing which lies in grant; has in no stage, and under no circumstances, any other remedy but by action; consequently the distinction in question can never be applicable to him. It is true, that the books often mention both disseifins and discontinuances of incorporeal hereditaments; but these disseifins and discontimances are only at the election of the party, for the purpose of availing himself of the remedy by action. -Some observations on disselfins of this description are inserted in the note below, commencing at page 330. b .- But a diffeilin or discontinuance of corporeal hereditaments necellarily operates as a diffeifin or difcontinuance of all the incorporeal rights or incidents which the diffeifee or difcontinued has himfelf in upon or out of the land affected by the diffeilin or difcontinuance.

effect. In process of time, involuntary alienation, or alienation arising from attachment for debt, was admitted. This produced the effates of tenants by elegit, by flatute-merchant, and flatute-flaple. Long leafes for years also came into use, and more settled and accurate notions were had, of tenancies by fullerance and at will. All thefe were confidered to be in the same fituation as the termor for years. Their policilion was held to be the policilion of the immediate freeholder; but as they had, or rather held, the possession, and were in by the act of the freeholder in some cases, and by his privity or sorbearance in all, they were considered to be in as if the seisin of the see. It sometimes happened that persons had the possession who had not the right; such were testants by diffeifin, deforcement, abmement, or intrusion. Still, as they had the polledion, they might, by livery of it, transfer it to another. Thus, by the old feudal law, on the one hand, the freehold could not be transferred but by livery of feifin t on the others livery of feilin could not be made by any person who had the possession, without transferring the freehold. This transfer of the fee was called a feofiment. No writing was necessary for this purpose; and when charters came into use, the transfer of the fee was supposed to be produced (as has been already observed), not by the charter, but by the livery which it authenticated. But the material variation with respect to the form of transferring property by livery was, that originally it was usual to make the feofinent on the land before the peers of the court, who fubfiribed the charter of feofinent with their names, and the entry of the faother upon the land was afreewards recorded in the lord's court; but in progrets of thing, the feotiment was allowed to be good

[q] 33. E. 3. Formed. 47. 13. H.7. 10. 36. Aff. 8. 4. H. 7. 17.

(3. Rep. 84, 85. 9. Rep. 51. a.)

[r] 3. H. 7. 12. (Mo. 634·) g. E. 4. 22. (1. Roll. Abr. 632. Sir Edward Seymour's case. 10. Rep. 95.)

[] 38. H. 8. Paten. Br. 101. Pl. Com. 233. Li. 1. f. 26. Alton Wood's case. (Ant. 251. b.) 48. E. 3. 23. (2 Sid. 65.)

[t] 15. E. 4. tit. Discont. 30. 6. H. 56, 57. 1. Sid. 83.)

a rent service, &c. or of a reversion, or remainder in taile, &c. grant the same in fee with warrantie, and leaveth assets in fec simple, and

[9] If tenant in taile of le roy, &c. uncore yet this maketh not ceo ne fait disconti- a discontinuance, &c. nuance, &c.

dieth, this is neither barre nor discontinuance to the issue in taile; but he may distraine for the rent or service, or enter into the land after the decease of tenant for life. But if the issue bringeth a formedon in the difcender, and admit himfelfe out of possession, then he shall be

barred by the warrantie and affets.

[r] Tenant in taile of a rent disseiseth the tenant of the land, and maketh a feossement in fee with warrantie and dieth, this is no discontinuance of the rent, but the issue may distreyne for the same; and albeit the warrantie extend to the rent, yet by the rule of Littleton it lieth not in discontinuance: and where the thing doth lie in liveric, as lands and tenements, yet if to the conveyance of the freehold or inheritance no liverie of seisin is requisite. it worketh no discontinuance. [/] As if tenant in taile exchange lands, &c. or if the king being tenant in taile, grant by his letters patents the lands in fee, there is no discontinuance wrought.

Per fine. Of a thing that lieth in grant, though it be granted by fine, yet it worketh

no discontinuance; and this is regularly true.

[1] If tenant in taile make a lease for yeares of lands, and after levie a fine, this is a discontinuance; for a fine is a feoffinent of record, and the freehold passeth. But if tenant (1. Rep. 76. 1. Roll. Rep. 188. in taile maketh a lease for his owne life, and after levie a fine, this is no discontinuance, Les and because the reversion expectant upon a state of freehold which lieth onely in grant passeth 151. i. thereby. (1)

25/. i. thereby. (1)

Sect. 619.

le lease fait. *

If NOTA, si jeo done terre a un NOTE, if I give land to another auter en taile, et il lessa in taile, and hee letteth the mesme la terre a un auter pur terme same land to another for terme of d'ans, et puis le lessor graunta yeares, and after the lessor grauntle reversion a un auter en see, et eth the reversion to another in see, · le tenant a terme d'ans atturna and the tenant for yeares attorne al grantee, et le terme est expire to the grantee, and the terme exdurant la vie le tenant en taile, pireth during the life of the tenant per que le grantee enter, et puis in tayle, by which the grauntee le tenant en taile ad issue et devie; enter, and after the tenant in taile en ceo case ceo n'est discontinu- hath issue and die; in this case this ance, nient obstant que le grant is no discontinuance, notwithsoit execute en la vie le tenaunt standing the grant be executed in en taile, pur ceo que al temps de the life of the tenant in taile, for lease fait a terme d'ans, nul no- that at the time of the lease made vel fee simple fuit reserve en le for yeares, no new fee simple was lessor, eins le reversion demurt a reserved in the lessor, but the reluy en tayle, sicome il fuit devant version remained to him in taile, as it was before the lease made.

* THIS is added to Littleton, and not in the originall, and therefore I purposely omit it to yet is the case good in law, because neither the lease for yeares, nor the grant of the reversion, divesteth any estate.

Sect.

4 Nota-item, L. and M. and Roh. No part of these Sections within crotchets, is in L. and M. and Roh.

(1) It is frequently said in our law-books, that a fine has no operation upon any estate or interest, which is not previously divested or turned to a right; but this expression, considering it strictly, is inaccurate. By turning to a right, it is generally meant, that the person whose possession is usurped, cannot restore it by entry, and can only recover it by action. See note 1, ant. 239. a. But in the present case, the expression, turned to a right, must be understood in a more general sense. The import of it is, that the parties to the sine, or some of them, have in them at the time of their levying the fine, or acquire by it, a possession, adverse to, and inconsistent with, the estate or right intended to be barred; the real owner, therefore, at the time of levying the fine, or by its operation, is diffeifed of his possession, but the right still remains in him. In this general sense, his possession may be said to be turned to a right; but this right may be such as enables him to restore his possession by mere entry, without his resorting to an action. See 2. Atk. 631. In another sense it is inaccurate, as it seems to imply, that the turning to a right is produced by the operation of the fine; But, generally speaking, this is not the case. Every diffeitin, intrusion, or abatement, turns the estate to a right, in the sense in which that expression is explained above. If the diffeisor, intrudor, or abator, afterwards levies a fine, it operates by the flatute, after a non-claim of five years, as a bar to the right of the perion whose estate is disselfed, intruded upon, or abated. But its operation in these cases is merely as a bar, the oaster of the possession or divelting of the right being previously essected by the discisin, intrusion, or abatement. In some cases, however, it does not operate only as a bar. As if tenant for life levies a fine, it is a forfeiture of his efface; and if the reversioner does not enter within five years after the forfeiture, or at the furthest within five years after the death of the tenant for life, he is barred of his remedy to recover. Wherley and Tancred, 1. Ventris 241.

good, though it were attefied by frangers only; and the recording of the feoffee's entry was diffrenced with. This, undoubtedly Tellened, very confiderably, the folemnity and notoriery of feoffinents: and we have an opinion of the highest authority, delivered with much confideration and infinite ability, in a case of the highest moment, that it had a very great essect on their operation and essioncy, with respect to the circumstance before us. -The case alluded to is that of Taylor on the demise of Atkyns v. Horde and others, & Burr. 60. 5 Bro. Par. Ca. 247. Cow. 689.-As a minute and accurate flatement and examination of the doctrines laid down in that case will serve greatly to illustrate the point now under consideration, they shall be presented here to the reader. The enfe, so far as it relates to the points in question, was, that sir Robert Atkyns was tenant for life; romainder to dame Am Atkyns, his wife, for life; remainder to fir Robert Atkyns (his cided fon by a former marriage) in tail male: remainder to Mr. John Tracy and his younger brothers Meachively, in tail male & remainder to Mr. Richard Atkyns and his heirs. Upon the death of his Robert

Sect. 620.

Of Discontinuance.

a son briese de forme- his writ of sormedon.

+MESsile tenant en BUT if. the tenant in taile fait leas a taile make a lease for del lesse, &c. terme de vie le lesse, terme of the life of &c. en cest case le tenant the lessee, &c in this en le tayle ad * fait un case the tenant in tayle novel reversion de + see hath made a new reversimple en luy; pur ceo sion of the fee simple in que quant il fist leas pur him; because when hee -terme de vie, &c. il dis- made the lease for life, continua le taile ‡, &c. &c. he discontinued the per force de mesme le leas, tayle, &c. by force of et auxy il discontinua the same lease, and also ma reversion, &c. Et il hee discontinued my recovient que la reversion version, &c. And it bede fee simple soit en hoveth that the reverascun person en tiel cas: sion of the see simple be et il ne poit estre en in some person in such moy que sue donor, en- case: and it cannot be in tant que mon reversion me which am the donor, est discontinue; ergo il inasmuch as my revercovient que la reversion sion is discontinued; ergo de see soit en le tenant the reversion of the see en le taile, que discon- ought to be in the tenant tinua ma reversion per in tayle, who discontitiel leas, $\mathcal{C}c$. Et si en nued my reversion by cest case le tenant en le lease, &c. And if in taile graunta per son this case the tenant in fait cest reversion en tayle grant by his deed fee a un auter, et le te- this reversion in fee to nant a terme de vie at- another, and the tenant turna, &c. et puis le te- for life attorne, &c. and nant a terme de vie mo- after the tenant for life rust, vivant le tenant en dieth, living the tenant in le taile, et le grantee de taile, and the grantee of le reversion entra, &c. the reversion enter, &c. en la vie le tenant en le in the life of the tenant taile, donques ceo est un in taile, then this is a disdiscontinuance en see; continuance in see; and et si apres le tenant en if after the tenant in de taile morust, son issue tayle dieth, his issue may ne poit enter, mes est mis not enter, but is put to

PUR terme de vie Here is implied, or for (1. Roll. 633.) terme of another man's life. (1)

Novel reversion 15. E. 4. tit. Discont. 20. de fee simple. Which must bee understood of a fee simple determinable upon the life of the lesse, which our author here calleth a fee simple; for if the lesfee dieth, the donce is tenant in taile againe, as hee was before; and that is the reason that if in that cafe hee granteth over the reversion (Cro. Car. 156.) and dieth; and after the death of tenant in taile, the leffee dieth; the entry of the issue is lawfull, because by the death of the leffee the discontinuance is determined; and confequently the grant made of the reverfion gained upon that discontinuance, is void alfo.

If tenant in talle maketh a leafe for three lives according to the 32. H. 8. cap. 28. statute of 32 H. 8. that is no discontinuance of the estate taile or of the. reversion, because it is authorised by act of parliament, whereunto every man in judgement of law is partie.

And yet in some cases the freehold may be difcontinued and not the reversion. [u] As if the [u] 38. E. 3. 32. 18. As. 2. husband and wife make 18. E. 3. 54. *2. H. 6. 24. a lease for life by deed (2) of the wife's land, referving a rent, the hufband dieth; this was a discontinuance at the common law for life; and yet the reversion was not discontinued, but remained in the wise. Otherwise it is

(2) Nota, a provife on 32 Hen. VIII. that the leafe shall be made in both their names, where the inheritance is in the woman. And fee Cro. Car. 22. Smith v. Trender, where there is a quere, whether it ought to be so where the inheritance is in both.-Lord Nott. MSS.

Robert the father, dame Ann his widow entered upon the lands. In Trinity term 1710 an ejectment was brought, in the court of common-pleas, against her ladyship, by John Phillips, upon the several demises of fir Robert Atkyns the son, and of Joseph Walker, to whom several terms of years attendant upon the inheritance had been assigned, in trust for he Robert the son. A verdict was found for the plaintiff, and he recovered terminum from prodictum, and had an habere facias poffessionem. It is to be observed, that no account of the case flates the grounds upon which this verdict was found for the plaintist. "Most probably, it was merely in confequence of the terms of years which had been affigued to him. On the 1st of January 1710, John Phillips, the plaintiff, flurendered the terms to fir Robert the fon; and on the 17th of the fame month fir Robert made a feofiment of the eflates in quellion, with livery of feifin, to James Earle and his heirs. In the deed of feoffment it was declared, that the feoffment was made, that James Earle might become perfect tenant of the freehold, in order for the fuffering of a common recovery; which recovery, it was thereby declared. should enure, to the use of sir Robert Atkyns the son and his heirs. The recovery was suffered in Hilary term 1710. Sir Robert died on the 9th of November 1711, without issue, and intestate. His nephew, Mr. Robert Atkyns, was his heir at law. In Hilary term 1711 an ejechment was brought against him by lady Atkyns; and in Easter term 1712 a general verdich was given for her. She died in the month of October following. Upon her death, Mr. Robert Atkyns entered, and continued in possession of the estates till the 16th of March 1753, when he died, leaving issue only two daughters; Ann, the wife of Mr. Horde; and Elizabeth, the wife of Mr. Chamberlayne. The death of fir Robert Atkyns the son without iffue, necessarily brought into question the validity of the recovery suffered by him; for if it were good, it destroyed his estate tails and all the remainders expectant upon it I and Mr. Robert Atkyns, his nephew, and after his decease Mrs. Horde and Mrs. Chamberlayne, his only children, became entitled to the estates, as his heirs at law. But if it were not a good recovery, their.

⁴ In L. and M. and MSS, this Scolion begins thus: Si jeo done terre a un auter en le tail, et il leffa me fine la terre a un auto più + de-en, L. and M. w en added L. and M. t le taile, &c. per force de mesme le leas, et auxy i terme de vie, & c. discontinua, not in L. and M. nor Roh.

⁽¹⁾ VIII. It has been observed before, that no conveyance by tenant in tail can operate as a discontinuance, unless it is created by livery, or by that which, in the eye of the law, is tantamount to it.—Littleton now proceeds to lay down, that to make a difcontinuance, the conveyance must be of such an estate as in its original creation may, by possibility, endure beyond the life of the tonant in tail. When the estate so created is at an end, the discontinuance also is at an end.

(8. Rep. 71.)

21. H. 6. 52. 15. E. 4. tit. Discont. 30.

32. E. 3. Discont. 2. 43. E. 3. Entr. Cong. 31. 3. H. 4. 9. 22. R. 2. Discont. 50. 34. Ast. 6. Pl. 4. 38. Aff. 6. p. 6. 43. Aff. 6. 48. 18. E. 3. 43. 21. H. 6. 52. 15. E. 4. tit. Difcontinuance 30. Brooke tit. Discont. 3. & 14. 4. H. 7. 17. 21. H. 7. 11. [w] 21. H. 6. 52, 53.

[y] 34. E. 1. quare impedit 179. 22. E. 3. 6. 17. E. 3. 3. 33. E. 3. quare imp. 196. 23. Aff. 8. 50. E. 3. 26. (Ant.298. Post.349.b. F.N.B.32. 1. Roll. Abr. 632. 1 Rep. 76.)

36. Aff. 8. 42. E. 3. 20. 22. R. 2. Discont. 50. (Scct. 601, 638.) 21. H. 6. 52, 53. Brooke tit. Discont. 3. 21. H. 7. 11. Lib. 1. fol. 85. Lib 10. fol. 96, 97. (W. Jones 210. Cro. Car. 156.)

(*) 15. E. 4. Discont. 30. Vide Sect. 642.

if the husband had made the leafe alone.

Et puis le tenant a terme de vie morust, &c. The like for life furrender to the grantee, or if the grantee recover in an action of forfeiture.

Avoit seisin et execution. And here it is to be observed, that when the reversion in this case is executed in en taile. the life of tenant in taile, it is equivalent in judgement of law to a feoffment in fee, for the

don. Et la cause est, pur And the cause is, forthat ceo que cestuy que avoit le he which hath the grant grant de tiel reversion of such reversion in fee en see simple, avoit le simple, hath the seisin law it is if the tenant seisuret execution de mestand execution of the mes les terres ou tene- same lands or tenements. ments, d'aver a luy et to have to him and to waste, or enter for the a ses heires en son de- his heires in his demesne mesne come de see, en as of see, in the life of la vie le tenant en taile. the tenant in taile. And * [Et ceo est per force de this is by force of the grant de mesme le tenant grant of the said tenant in tayle.

state for life passed by livery. [w] If tenant in taile make a lease for life, the remainder in fee, this is an absolute discontinuance, albeit the remainder be not executed in the life of tenant in taile, because all is one estate, and passeth by one livery. And so note a diversitie betweene a grant of a reversion,

and a limitation of a remainder. B, tenant in taile maketh a gift in taile to A, and after B. releaseth to A. and his heires, and after A. dieth without issue; the issue of the first donce may enter upon the collaterall heire, because A. had not seisin and execution of the reversion of the land in his demesne as of see, as Littleton here speaketh. But if tenant in taile make a lease for the life of the lessee, and after releaseth to him and his heires, this is an absolute

discontinuance; because the see simple is executed in the life of tenant in taile.

[y] If tenant in taile of a mannor whereunto an advowson is appendant, maketh a seostment in fee by deed (as it ought to be) of one acre with the advowson, and the church becommeth void, and the feoffee present, tenant in taile dieth, the church becommeth void; the issue shall not present untill he hath re-continued the acre. But if the feoffee had not executed the fame by presentment, then the issue in taile should have presented. And so was it at the common law, of the husband seised in the right of his wife, mutatis mutandis.

If a fine be levied to a tenant in taile, and he granteth and rendreth the land to him and his heires, and die before execution, this is no discontinuance. Otherwise it is, if it had

beene executed in the life of tenant in taile.

If tenant in taile make a lease for life of the lessee, and after grant the reversion with warrantie, and dieth before execution, this is no discontinuance; because the discontinuance was (as hath beene said) but for life, and the warrantie cannot enlarge the same. (1)

Et ceo est per force del grant de mesme le tenant en tayle. Littleton himselse is of the same opinion, (*) as it appeareth he was in our bookes; that if tenant in taile make a lease for life, and grant the reversion in fee, and the lessee attorne, and that grantee granteth it over, and the lesse attorne, and then the lesse for life dieth, so as the reversion is executed in the life of tenant in taile, yet this is no discontinuance, but that after the death of tenant in taile the issue may enter; because (as Littleton here saith) he is not in of the grant of the tenant in taile, but of his grantee.

If at this day tenant in taile make a lease for life, and after by deed indented and inrolled according to the statute he bargaineth and selleth the reversion to another in see, and the lessed dieth, so as the reversion is executed in the life of tenant in taile; albeit the bargainee is not in the per by the tenant in taile, yet inasmuch as he claimeth the reversion immediately from him, which is executed in his lifetime, this is a discontinuance. And so it is, and for the same cause, if tenant in taile had granted the reversion to the use of another and his heires. If tenant in taile maketh a lease for life, and after disseiseth the lessee for life, and maketh a feoffment in fee, the lessee dieth, and then tenant in taile dieth; albeit the fee be executed, yet for that the fee was not executed by lawfull meanes, (as in all the cases of Littleton it appeareth it ought to be) it is no discontinuance.

Sect.

* No part of this or of the following Section within crotchets is in L. and M. and Roh.

(1) All this is a consequence of the doctrine laid down in the last page. If the remainder or reversion is created at the same time as the particular estate, it necessarily must be created by the same livery. If it is created at a subsequent time, then to continue the discontinuance after the determination of the particular estate, the reversion or remainder must be executed in possession during the life of the tenant in tail. The entry of the reversioner or remainder-man in this case is tantamount to a second livery.

upon the decease of dame Ann Atkyns, Mr. John Tracy became seised in tail of the lands devised by the testator's will, with the feveral remainders over.—In the year 1752, an ejectment was brought against Mr. Robert Atkyns, and Mr. and Mrs. Horde, and Mr. and Mrs. Chamberlayne, by Cyprian Taylor, on the demite of Mr. John Tracy, who, in consequence of a direction contained in fir Robert Atkyns the father's will, had taken the name of Atkyns. The jury found a special verdict. The case was argued four times before the judges of the court of king's-bench. A point arose, whether supposing the recovery to be bad, the plaintiff's ejectment, not having been brought within twenty-one years after his title accrued, was not barred by the statute of limitations. The court was of opinion it was barred by that statute. The case afterwards went to the house of lords: all the judges were ordered to attend: their opinion was asked upon the point arising from the statute of limitations; it agreed with that of the judges of the court of king's bench: the judgment of the court was therefore affirmed. Afterwards, Mr. John Tracy Atkyns and all his brothers died without iffue; and then, supposing the recovery to be void, Mr. Edward Kinsey Atkyns, the then heir at law of Mr. Richard Atkyns, became entitled to the efface. He claimed under a new title, and was not therefore bound by the flatute of limitations. An ejectment was delivered by him in Hilary term 1777. This brought the question of the validity of the recovery once more before the court. It is to be observed, that though, when the case came before the court upon the ejectiment brought by Mr. John Tracy Atkyns, the matter went off on the point arising from the flatute of limitations, yet the questions arising upon the validity of the recovery were most elaborately argued by the bar; and lord chief-justice Mansfield, when he gave the judgment of the court, entered into a very minute discussion of them, and gave his opinion very fully and decisively upon them all is so that what was said upon this subject, when the case came before the court in 1777, was, in general, only a repetition of what was faid upon it on the former occasion. As lord Mansfield's speech, in the report given of it By fir James Burrow, contains the most methodical and comprehensive state of the arguments and opinions intended to be discussed in this place, it is here particularly referred to .-- His lordship stated the question to be, Whether Earle was a good tenant of the freehold. He observed, that to prove he was a good tenant of the freehold, it was necessary to shew, either that sir Robert Atkym, by the entry under the judgment in ejechment in 1710, acquired the freehold by diffeifin , or that, supposing he did not acquire the freehold, he acquired the posselsion, and by his seoffment vested an estate of freehold in Barle. His lordship denied both of these positions. As to the first, he laid it down, that the diffeisin to be effectual in this case, must be an actual dissersin, not a disselsin, which was merely fuch, at the election of the party. No case, therefore, or other authority from the books respecting disselins, was applicable to the present case, if it did not relate to an actual diffeish. He then proceeded to explain the nature of an actual disselsing He defined

Sect. 621.

EN mesme le manner serra, IN the same manner shall it be, if (Post. 335. b. mesme le case.)

si en le case avantdit le te
in the case aforesaid the tenant

nant a terme de vie apres l'at- for terme of life after the attornetournement al grantee ust alien ment to the grantee had aliened en fee, et le grantee ust enter pur in fee, and the grantee had entred forfeiture de son estate, et puis le by forfeiture of his estate, and aftenant en taile ust devie, c'est un ter the tenant in tayle had died, discontinuance, causa quâ su- this is a discontinuance; causa quâ

HIS is added in this place, but in the originall it commeth in after in this 21. H. 6. 52, 53. 15. E. 4. Chapter *.

Sect. 622.

version en see.

MES en cest cas, si tenant en BUT in this case, if tenant in taile (Sir W. Jones 209. C10. C2r. 156.) taile que granta le rever- that grants the reversion, &c. sion, &c. morust, vivant le tenant dieth, living the tenant for life, and a terme de vie, et puis le tenant a after the tenant for life dieth, and terme de vie morust, et puis ce- after hee to whom the reversion huy a que le reversion fuit graunt was granted enter, &c. then this is enter, &c. donque ceo n'est pas no discontinuance, but that the isdiscontinuance, mes que l'issue del sue of the tenant in tayle may well tenant en taile poit bien enter enter upon the grantee of the resur le grauntee del reversion; version; because the reversion pur ceo que le reversion que le which the grantee had, &c. was grauntee avoit, &c. ne fuit exe- not executed,&c. in the life of the cute, &c. en le vie le tenant en tenant in taile, &c. And so there is taile, &c. Et issint il est graund a great diversitie when tenant in diversity quant tenant en taile tayle maketh a lease for yeares; fait un leas pur terme d'ans, et and where hee maketh a lease for lou il fait leas pur terme de vie; life; for in the one case hee hath a car en l'un cas il ad reversion en reversion in tayle, and in the other taile, et en l'auter cas il ad un re- case hee hath a reversion in see. (1)

F this sufficient hath beene said before, and is of itselfe manifest, and needeth no explication.

Like law was at the common law of a husband scised of land in right of his wife, mutatis 18. Ast. 6. 11. 11. 6. 53. mulandis.

Sect.

* But it does not appear in this Chapter in L. and M. nor Roh. not in MSS.

(1) See the note on the following Section.

defined seisin to be a technical term, to denote the completion of that investiture, by which the tenant was admitted into the tenure : diffeifin, therefore, must mean the turning the tenant out of his tenure, and usurping his place and feudal relation. He observed, that originally no tenant could alien without licence of the lord; and that, when the lord confented to the alienation, the only form of conveyance was by feofiment, before the peers of the court, with the lord's concurrence, and with the teremonics of homage and fealty. That a diffeisin differed from a dispossession. It was something more. The essect of it was to make the disseller tenant to every demandant, and freeholder de fadlo, in spite of the true owner. That, on the one hand, the lord must know upon whom to call as his tenant; on the other hand, the stranger must know against whom to bring his pracipe. A dispossession, therefore, did not amount to a disseifin, if it were not forcible, that is, against the will of the real owner; and if it were not such as, both with respect to the lord and to Arangers, introduced the dispossession into the tenure. These, he said, were the consequences of an actual disseisin. A disseisa by election was attended by none of these circumstances. In that case, the disseisor was neither tenant to the lord nor the stranger; -he was merely a disselfor at the will of the disselfe, who might, if he thought the process of allife a more eligible remedy than any of those to which he might have recourse, without disclaiming his scisin, refort to it, and, for that purpose, choose to be considered as disseised. From this description of the nature and consequences of the two different kinds of foisin, his lordship inferred, that sir Robert's entry was not an actual disseisin. Supposing it a real proceeding, a termor might recover against the disselsor, or against the feosse of the lessor; the possession he recovered enured to himfelf, or for his own benefit during his term :- fubject to that, it enured to, or for the benefit of the persons who had the right to the freehold; that is, to the lessor, if he continued the owner of the fee; to his alience, if he had infeosfed; to the heir or feoffee of his diffeifor, if he had been diffeifed, and his entry taken away.—Then, suppose the proceeding to be merely fictitious, the judgment only entitled the party to recover the possession, without prejudice to the right. Now, by the special verdich it appears he had no right to the possession; he had therefore a possession without prejudice to the right. He was not in as particular tenant; there was no privity of feifin; he had only a naked possession.-But, says his lordship, the case is still aronger: the true owner cannot even elect to make a person in possession under a judgment in ejectment, a disseisor: the entry is not injuft & fine judicio, but under authority of a court of justice. The true owner might enter upon a discisor. But after & judgment in ejechment, an actual entry would not be permitted. Upon this reasoning his lordship establishes his first position, That fir Robert Atkyns did not acquire, by his entry, an actual estate of freehold, by diffeilin. This brought his lordship to the second quotion. Whether the feoffment to Earla vested an estate of freehold in him by disselsin. Here his lordship concluded, from

Lib. 3. Cap. 11. Of Discontinuance. Sect. 623, 624, 625.

Sect. 623.

ral, Ec.

CAR si terre soit done a un FOR is land bee given to a man home et a ses heires males and to his heires males of his de son corps engendres, le quel body engendred, who hath issue ad issue deux sits, et l'eigne sits two sonnes, and the eldest sonne ad issue file et devy, * et le tenant hathissue a daughter and dieth, and en taile fait un leas pur terme des the tenant in tayle maketh a lease ans et devy, ore le reversion dis- for yeares and die, now the revercendist a le sits puissne, pur ceo sion descendeth to the younger que le reversion fuit forsque en le sonne, for that the reversion was taile, et le sits puissne est beire but in the taile, and the youngest male, &c. Mes si le tenant ust sonne is heire male, &c. But if the fait un leas pur terme de vie, &c. tenant had made a lease for life, et puis morust, ore le reversion &c. and after died, now the reverdiscendist a le file del eigne sits, sion descendeth to the daughter of pur ceo que le reversion est en see the elder brother, sor that the resimple, et la file est heire gene- version is in the see simple, and the daughter is heire generall, &c.(1)

This is evident also, and needeth no explanation.

Sect. 624.

ITEM, si home soit seisie en ALSO, if a man be seised in taile taile de terres devisables per of lands devisable by testacontinuance fuit fait en la vie del tenant en le taile, &c.

testament, &c. et il ceo devisa a ment,&c. and hee deviseth this to un auter en fee, et morust, et another in fee, and dieth, and the l'auter enter, &c. ceo n'est pas other enter, &c. this is no discondiscontinuance, pur ceo que nul dis- tinuance, for that no discontinuance was made in the life of the tenant in taile, &c.

g. E. 4. 22. 20. H. 6. 14. Vid. 18. E. 3. 8. (C10. Cra. 405. 1. Roll. Abr. 633.)

HIS is manifest, and needeth no explanation: only this is to be observed, that no discontinuance can be made by tenant in taile, but such as is made and taketh effect in his life-time, which is here implied in the (&c.)

Sect. 625.

[a] 9. E. 4. 24. h.

calc.

37 · .

Lib. 1. fol. 140. in Chudlye's

bookes, and faith that so it was adjudged.

This must be underthe donor is immediately ex- fait enfeossa le donor, deed enseosse the dostood where the reversion of

A ND of this opinion is Littleton [a] in our bookes, and faith that so it

ITEM, si terre soit ALSO, if land be gibookes, and faith that so it

A LSO, if land be gibookes, and faith that so it vant le reversion al the reversion to the Enfeoffe le donor, donor, et puis le te- donor, and after the nant en taile per son tenant in taile by his

* et le tenant en taile fait un leas pur terme des ans, et devy, not in L. and M. nor Rok.

(1) The estate of the lessee for years not being created by livery, does not displace the possession, and consequently does not disturb the descent of the inheritance upon the issues inheritable to the estate. It is otherwise where the lease is for life. That is created by livery, and therefore displaces the possession, and gives the tenant in tail a tortious estate in see simple, in reversion immediately expectant upon the life estate of his donce; -- that reversion must therefore descend on the daughter as heir general.

the principles laid down by him in his discussion of the sirst question, that the feossment did not amount to an actual disseisin, but was fuch merely at the will of dame Atkyns. In this part of the question he says, that except the special case of sines with proclamation, which, he observed, stands upon distinct grounds, and the construction of the stat. of 4 Hen. VII. c. 24. for the sake of the bar, he could not think of a case where the true owner, whose entry is not taken away, might not elect, by choosing a possessions remedy, to be deemed as not having been disselfed. The judges of the king's beach, in the opinion delivered by them in 1774, express themselves still more strongly on this head. They say, that " where the books speak of scotsments in fee by tenants for years, and that the fee simple passes thereby, it is to be understood of those scotiments of old, attended with livery, 🧗 and actual transmutation of the possession from one man to another; that scottments, from having been the only conveyance of " land, for a long term of years have languished into mere form, and are nothing now more than a common conveyance; that " their grandour and efficacy is loft; and that without actually transferring of the effate from one man to another, they mix with "the community of all other affurances: that the name of thefe feoffinents, and the remembrance of them, remains, and furvives " them, however imperfectly, after the practice of making them, and confequently their folemnity, is quite at an end." Lord Mansfield afterwards confidered the cafe in a third point of view, which was, That a tenant in tail in remainder could not, by the established law of the land, suffer a common recovery, without the consent and concurrence of the immediate tenant of the frechold-Now, fays his lordship, the law will never permit that to be effected by wrong, unfair, or indirect means, which cannot be effected by right, fair, and direct means: but fir Robert could not by right, fair, or direct means, fuffer a common recovery, in the life of dame Ann, without her concurrence; he never had her concurrence; it follows, that his recovery must have been covinous, and therefore void. Upon these grounds, the court were of opinion, 1st, that sir Robert Atkyns the son by his entry under the verdick in 1710, was not an actual diffeifor, and therefore had not in him any actual effate of freehold i adly, that his feofiment to Earle gave Earle an offace of freehold only at the election of dame Atkyns, but did not give him an actual effate of freehold; and, 3dly, that the whole transaction was fraudulent, and therefore void. The doctrine upon which the first

mion.

a aver et tener a luy nor, to have and to et a ses heires a touts hold to him and to his jours, et liver a luy heires for ever, and deseisin accordant, Ec. liver to him seisin acceo n'est pas disconti- cordingly, &c. this is nuance, pur ceo que no discontinuance, benul poit discontinuer cause none can disconl'estate en le taile, si- tinue the estate taile, non que il discontinue unlesse he discontinule reversion celuy que eth the reversion of ad le reversion, &c. ou him who hath the rele remainder, si ascun version,&c. or remainad leremainder, Gc. Et der, if any hath the reentant que per tiel se- mainder,&c. And inasoffment fait a le do- much as by such feoffnor (le reversion a- ment made to the dodonques esteant en luy) nor (the reversion then son reversion ne fuit being in him) his rediscontinue ne alte- version was not disrate, Ec. cest serssment continued nor altred, n'est pas discontinu- &c. this feoffment is ance, Ec. no discontinuance, &c.

pectant upon the estate of the (1. Roll. Abr. 634.) donee; [b] for if a man make [b] 41. Ass. 2. 41. E. 3. 2. a gift in taile the remainder (1. Rep. 146. b.) in taile, referving the reversion to himselfe: in this case if the donce enfeosfe the donor, this is a discontinuance, because there is a meane estate; and so doth Littleton here put his case of a reversion immedi- (Ant. 42. a.) ately expectant upon the gift in taile. Also it is to be intended of a fcoffment made to the donor solely or only; for if the donor and 28. H. 8. Dier 12. a stranger, this is a discontinuance of the whole land.

the leffor, the remainder to the lessor and an estranger in fee: in this case for a smuch as the limitation of the fee should worke the wrong, it enureth to the lessor as a surrender for the one moytie, and a forfeiture as to the remainder of the (Dyer 12. b.) firanger; for he cannot give to . the lessor that which he had before, as our author here faith; and as to the remainder to the stranger, it is a forfeiture

for his moytie, and when the lessor entreth, he shall take the benefit of it. But if two joynte- (Ant. 169. a. 186. a. 193. b. nants be, and one of them enfeoffe his companion and a stranger, and make livery to the stranger; this shall vest only in the stranger, because the livery cannot enure to his compa-

Nul poet discontinuer l'estate en taile, sinon que il discontinue le rever- 40. Ast. 36. 21. Ast. 36. sion, &c. ou le remainder, &c. And therefore for this cause, if the reversion or re- Pl. Com. 555. mainder be in the king, the tenant in taile cannot discontinue the estate taile. [c] But tenant [c] 33. H. 8. tit Taile. Br. 41. untill the statute of 34 H. 8. ca. 20. which restraineth such a tenant in taile; but that common the state of 34 H. 8. ca. 20. which restraineth such a tenant in taile; but that common the state of a state of in taile, the reversion in the king, might have barred the estate taile by a common recovery, Pi. Com. ubi supra.

the forfeiture; here is the reversion revested, and yet the discontinuance remained at the com- 18. E. 3 45. mon law.

But if tenant for life make (1. Rep. 76. b. Sid. 361.) a lease for his owne life to

200. b. 2. Roll. Abr. 86. 403. 1. Rep. 100. b. 4. Leo. 23.)

18. E. 3. 45. F. N. B. 142. a.

(Ant. 333. b. Post. 336.)

Mari afective

2. 18 14 34. A. A. popl

suffered to purthe.

Sect. 626.

quâ fuprà.

EN mesme le maner est, lou IN the same manner is it, where (.. Roll. Abr. 633-)

. terres sont dones a un home lands are given to a man in taile, en taile, le remainder a un auter the remainder to another in fee, en see, et le tenant en taile enséessa and the tenant in taile enseoffe him celuy que est en le remainder, a that is in the remainder, to have aver et tener a luy et a ses heires; and to hold to him and to his heires; ceo n'est pas discontinuance, causa this is no discontinuance, causa quâ fuprà. (2)

I E remainder a un auter. Here it appeareth that (as hath beene faid in case of a reversion) the remainder must be immediately expectant upon the estate taile.

Sect.

(1) See Stone v. Newman, 2. Cro. 427. (2) IX. As to discontinuances made to, or with the concurrence of, the remainder-man or reversioner: -The feoffment of tenant in tail to the immediate remainder-man or reversioner in fee, has the operation of a surrender. In this light it cannot be considered to pass a greater estate than the grantor may lawfully convey 1 it does not, therefore, work a discontinuance. But if it is made to a stranger, the mere concurrence of the remainder-man or reversioner does not prevent the discontinuance, either with respect to the issues in tail, or his own remainder or reversion, even though the tenant in tail die without having issue. Thus, in Baker v. Hacking, 3. Cro. 387. 405. y. C. being tenant in tail, with the immediate reversion in see to R. C. both of them joined in a scoffment to A. for life, R. C. made his will and died; and then J. C. died without iffue. It was admitted, that if it were a diffeontinuance of the reversion, the devisor, not being feised, had no power to devise. Sir Geo. Croke was of opinion, that as there was no issue of the tenant in tail, his scoffment was no difcontinuance of the reversion: he considered it as the lease of the tenant in tail during his life, and afterwards, the lease of the reversioner; and that the revertioner's joining shewed it was not the intention of the parties to displace his estate. But the three other judges held it to be a difcontinuance on the ground, that the effect of a difcontinuance is immediate, and does not depend on the tenant in tail having or not having iffue. -They were also of opinion, that if the reversion in see, instead of being in a stranger, had been in the tenant in tail himfell, the feofiment would have been a difcontinuance, as well of his own reversion as of the estate of the islue in tail.-But where the tenant for life and revertioner join in the conveyance, each of them is confidered to puls his own cleate a the tenant for life, the freehold; the reversioner, the inheritance. Hence if tenant for life, remainder in tail, rentainder in sec, join in a fine, it is no discontinuance to the remainder-man in fee. This was refolved in Peck v. Channell, 1. Cro. 827, 818. on the ground, that none thall make a discontinuance, but he who is feifed of an efface tail in possession.

of these points turns, is not immediately the subject of the present enquiry. But some of the principles laid down by the court in giving their opinions on the 2d and 3d points, will be investigated here, under two general questions. I. What effate in the lands a feoffor must have to give the seoffment estimacy.—It seems to be admitted by the court, in the case referred to, that, originally, no greater effate was required to be in the feoffer than mere possession. This they attribute to the solemnities originally attending both the admission of tenunrs into the tenure, and the transfer of the fee. But it seems to be their opinion, that, since most, if not all, of these solemnities have been dispensed with, the peculiar estimacy of a secothment has been lost. This has certainly been the case in one very remarkable instance. Lord chief-baron Gilbert, in his Treatise of Tenurus, p. 43. observes, " that the " feofice of the diffeifor that came in by title, after a year and a day was expired, was unciently held, to have right of possession,

Cap. 11. Of Discontinuance. Sect. 627, 628, 629. Lib. 3.

Sect. 627.

discontinuance.

ITEM, si un abbe ad un re-version, ou rent service, ou sion, or a rent service, or a rent charge, et voile graunter rent charge, and he will grant this * cel reversion, ou rent service, ou reversion, or rent service, or rent rent charge, a un auter en fee, et charge, to another in fee, and the le tenant atturna, &c. ceo n'est pas tenant attorne, &c. this is no discontinuance.

Of inheritances that lie in grant, sussicient hath beene said before.

Sect. 628.

verie de seisin, &c.

E N mesme le manner lou I N the same manner where an abbe est seise d'un advow- abbot is seised of an advowson, son, ou de tielx choses que pas- or of such things which passe by sont per voy d'un grant sans li- way of grant without liverie of feisin, &c.

HERE it appeareth, (as hath beene said) that an advowson doth not lie in liverie, but in grant.

Sect. 629.

(Ant. 234. a.)

Godowich & ell.

III.

en see, &c.

ITEM, si tenant en taile ALSO, if tenant in tayle let-lessa sa terre a un auter pur teth his land to another for terme de vie, et puis il graunta life, and after he granteth in en see le reversion a un auter, see the reversion to another, and et le tenant atturna, et puis the tenant attorne, and after the le tenant a terme de vie aliena en tenant for life alien in fee, and fee, et le grantee de reversion en- the grauntee of the reversion entra, &c. en le vie le tenant en le ter, &c. in the life of the tetaile, et puis le tenant en le nant in taile, and after the tenant taile morust, son issue ne poit in taile dieth, his issue shall not enter, mes est mis a son briese de enter, but is put to his writ of formedon, pur ceo que le rever- formedon, because the reversion in Jion en fee simple que le graun- fee simple which the grauntor had tor avoit per le grant del tenant by the graunt of the tenant in de mesme le tenaunt en le taile, the same tenant in tayle, and et pur ceo est un discontinuance therefore it is a discontinuance in fee, &c.

Of this sufficient hath beene said before.

SECT.

* cel reversion, on rent service, on rent charge, ... un d'enx, L. and M. and Roh. but as above in MSS.

[&]quot; and to put the diffeifee to his writ of entry, because the seoffee came in by title. Hence, writs of entry against the scoffee in the for and mi :- but this was not held to in respect of disleifors, because they themselves being the wrong-doers, had no law in their favour, lest it should encourage such injuries. But afterwards, as feostments became more secret, and nothing paid to the " lord, then they thought it too hard fuch feoffments thould alter the right of possession; and therefore they construed the feosless "that came in by his own aft, to be a wrong-doer, and not to alter the right of possession." But it will be dislicult to and another instance in which scoffments have lost their esticacy. The arguments brought to prove that they have lost then edicacy in creating an estate of freehold, when it is not in the feosior at the time of the feoslinent, are, aste that livery is not made now with the folemnity with which it was made formerly;--2dly. that the patlages in the books which speak of feotiments by tenants for years, and others having estates less than freehold, creating estates of freehold in the feosite, by diffeilin, are to be understood at referring only to a diffeifin by election.—As to the fir 4 objection. It feems to be every where admitted, that the feoffments we are speaking of, ourr had the operation and efficacy in question; and that this operation and estimacy is afcilled to them in numberless passinges in our law books: so that the great, if not the only, disticulty is to shew, that, at the time when it is universally agreed feoffments had this operation and efficacy, they were made with no other forms and folemnities than those with which they are made now. It is certain, that the cultom of making livery before the peers of the court, and recording the entry of the feather m the records of the lord's court (if it were ever abfolutely necessary), was dispensed with very soon after the Conquest, and vice fallen completely into difuse at so early a period as that of Henry H.; so that in this reign, and from thence to the present time, no other ceremony in making feofinents was uted, than that which is now practifed, of the feoffor and feoffice coming up in the land, gither in person or by attorney, and there the scossor in the presence of witnesses (all other persons being out of the land) delivering the possession of it to the feosite. The form of making scotsments in the reign of Henry 11, is minutely detected 111. in Bracton, lib. 2. cap. 18. Item, non valet donatio, nifi subsequatur traditio, tunc demum, cum donator Plenam secerit sessione donatorio per se si prasens sucret, wel per procuratorem, es literas si absens sucrets ita qued charta donationis & litera procuratoria coram vicinis, ad hoc specialiter convocatis, legantur in publico, & etiam cum d'nator corpore & animo recessert a possiblem : This is the account given by Bracton of the mode of making footbacaus in his time. He makes no mention of the pictence of the pares rurie being necellary; or of its being necellary to record the entry of the feotice in the lord's court; or of any other ceremony besides those now practifed. Hence we find that the account given by hi William Blackstone, book 1. chap. 1. § 3. of the prefent mode of making feofiments, is no more than a transcript of the pullage cited above from Bracton. The next thing to be thewn is, that as the ceremony of making feotlinears has been the fame during all this period, the courts of judicature, and the writers upon our laws, have, during all this period, agreed in ateribing to them the effect and operation in question. Their lan-RAnke

Sect, 630.

le second taile, &c.

ET nota, que ascuns sont AND note, that some make dis- (1. Roll. Abr. 631.)

discontinuances pur terme continuances for terme of de vie. Sicome tenaunt en le life. As if tenant in tayle make taile fait un lease pur terme de a lease for life, saving the revie, savant le reversion a luy auxy version to him as long as the relongement que le reversion est al version is to the tenaunt in tayle, tenant en taile, ou a ses heires; or to his heyres; this is no disceo n'est discontinuance, forsque continuance but during the life of durant la vie le tenant a terme de tenant for life, &c. And if such vie, &c. Et si tiel tenant en taile tenant in taile giveth the lands dona les tenements a un auter to another in tayle, saving the en taile, savant le reversion, don- reversion, then this is a discontiques ceo est discontinuance durant nuance during the second tayle,

HIS is manifest, and hath beene handled before, and needeth no explanation; onely this is to be observed, where Littleton puttern hereaster cases of discontinuances by fcosiement, &c. he hath a double entendment. First, by fcossement, or by any other convevance which may make a discontinuance. Secondly, (Sc.) implies ha discontinuance by a gift in taile, or a leafe for life, &c.

Sect. 631.

force de liverie de seisin, &c. verie of seisin, &c.

MES lou le tenant en tayle BUT where the tenant in tayle fait un lease pur terme maketh a lease for yeares or d'ans, ou pur terme de vie, le re- for life, the remainder to another mainder a un auter en fee, et de- in fee, and delivereth liverie of livera liverie de seisin accordant, seisin accordingly, this is a disceo est discontinuance en see, pur continuance in see, sor that the see ceo que le fee simple passa per simple passeth by force of the li-

This is evident also, and hereef sussicient hath beene spoken before.

Sect. 632.

Ircints, &c. ou pur broken, &c. or for

et pur ceo que les condition, &c. and for conditions fint en- that the conditions be

que ascuns tiels derstood, that CES sait sur condidiscontinuances sont some such discontinu- tion, &c. Here is to be unfait sur condition, &c. ances are made upon derstood a divertitie betweene a condition in deed, whereof Littleton here speaketh, and a condition in law, whereof fom what hath beene faid before in this chapter,

VIZ.

ET est ascavoir, AND it is to be un- DISCONTINUAN-

guage in this respect is persectly unisorm, that no freehold is required in the scoffor, and that however tortious or flender his policilion may be, his feofinent, necestarily and unavoidably, gives an estate of freehold to the scottee. Nothing can be more decilive on this fubject, than the following pallages transcribed from Bracton .- Poterit autem res effection alienas & extero, Quantum ad jus 35 proprietatem, 35 feodum, & liberum tenementum, vjum fructum, & nudum ufum; & aliquis popuerit fo on tesfinam, per diffesfinam, wel-per intruftonem, cum forte inwenerit rem wacantem. Et fi talis, dum ita fuerit in feyfina, donationem Lecent, watchet quantum ad ipfum, & feoffetum fuum, & alsos, qui jus non habent, ut prius destum eft, donce per tlium, qui jus habets revoceter. Item poterit effe alienas quantum ad omnia prædicta, et alicujus m poffeshone es istentes quoad nuslum usum, sect quoid hoe, quod servitatem habeat in re, quoid usum fructum percipiendum, sive ad certum terminum vel ad voluntaiem. Hon quoud boe, quod habeat cuftod am, wel-curam, wel-hujufmodi; in quibus cafibus, fi dum fie fuerit in fesfina, quali quali, doncetionem fecceit, flatim fit res data accipientis, quond dantem & accipientem, & quoad alios, qui jus non habente Sed quoad verum dominum, nunquam erit liberum tenementum, nifi ex longa & pacifica feybna, & unde fi meontmenti post tale feosfamentum posset verus dominus ponere se in sexsinam, omnes quoscunque tenere posset exclusos a possessione.—Sed quid dicener de co qui nullam omnes sterman habiert, nec alequam juris scintillam, sedonationem tecerit de ve quam alius tenet, per se espem vel per alium nomine suo, non faciet rem accepientes, cum iffe nibit tene as quia non pot il plus jures ad alcum transfers e quam effe habets nee plus walebit ifta donatio quam valeret fi aliquis transiens per al quod manerann ab aliquo poffession, diex it jocio suo suateri, Do tibi tale manerany, quad talis poffidet, quia nibil alind effet dicere quam deve er plenam pugnatam ex nibilo, cum poffesto non fit vacua.-Biati. 145. 2. c. 14 - Si fiat donatio de re aliena. - So, in another place: Hem licit liberum tenementum non habucrit, potest succe quis, days tomen in fersina fuerst aliqua jufta de caufa, ficut ad terminum annorum, vel vatone cultodice. Idem evit, fi nultam juftam carfam habuerit, ui fi per intrufionem wel differzinam vet cum fit in feizina alijs donare poterit, licet non cum effectuert alus per donatronem facere liberum tenementum, quod quidem ipfe non habuerit.-Ibid. lib. 2. c. 5. 8 4.-It feems to be clear from thefe Pallinger, that in Brackon's time, every person who had the possession, however stender his possession might be, as termon for years, tenant at will, or guardian; or however tortious his possession might be, as a dissersor or intruder; was nevertheless considered to be in the feifin of the free and might by livery transfer it to another. Bracton frequently repeats this doctrine, and illuftences It by many examples in the courte of the fecond book .—Such is the account given by Braclon of the operation of feoffments and as the account given by him of the form of feofinents has been contrafted with the account given of it by fir William Blackstone, the reader is defired to contraft the above account given by him of the operation of feoffments with the account given of it by he Edward Coke, anti 48, b. and 49, a. He expresses himself to the same essect in his 2d Inst. Sol. 413. Commentage on the flature of Wellmintter 2. cap. 2. he observes, that though the act speaks of an alienation by scotlinent by a tenant for your. Act

(Ant. 335. a.)

(a. Rep. 59.)

4. H. 6. 2. g. H. 7. 24. b. Lib. 8. fol. 43, 44. Whittingham's case.

(Ant. 12. b. 46. b. 202. a.)

Whittingham's case, ubi supra.

viz. where the feme is tenant for life, and the husband maketh a fcoffement in fee, and the leffor entreth for the condition in law.

Conditions sont enfreints, &c. Here is impliby disabilitie of the feoffees, or by any condition performed on the part of the feoffor, or otherwise, whereby the state is in any fort avoided.

Come si le baron Soit seisie de certain terre en droit sa feme, &c. Here it appeareth, that for the condition broken, the heire of the husband may enter; for albeit no right descend from the husband to his heire, yet the title of entry by force of ment, and referved to him and his heirs, doth descend to his heire; and Littleton faith truly, that so it hath beene adjudged.

Sur le beire. Nota,

when the heire in this case judge. hath entred for the condition broken, and hath avoided the

after the re-entry of the heire she may enter.

auters causes, solonque other causes, accordle course de la ley, ing to the course of tiels estates sont de- law, such estates are feates, donques sont defeated, then are the les discontinuances de- discontinuances defeated, or any cause given either feats, et ne tollent as- ed, and shall not by cun home per force force of them take any de eux de son entrie, man from his entrie, Ec. * Come si le baron &c. As if the husband soit seisie de certaine be seised of certaine terre en droit sa feme, land in right of his et fait seoffement en wise, and maketh a fee sur condition, et seoffement in see updevie, si le heire a- on condition, and dypres enter sur le feof- eth, if the heire after fee pur le condition enter upon the feosse enfreint, l'entrie la for the condition broband created upon the feoffe- feme est congeable sur ken, the entrie of the le beire, pur ceo que wife was congeable upper l'entrie del heire on the heire, for that le discontinuance est by the entry of the defeat, come est ad- heire the discontinuance is defeated, as is adjudged

feoffement, the estate of the heire vanisheth away, and presently the estate vesteth in the feme or her heires, without any entry or claime by her or them; for the heire entreth in respect of the condition, upon the reall contract, and not of any right, as hath beene said; and if the husband himselfe had re-entred, the state had vested in his wife: and ther fore where Littleton and our bookes fay, that the wife shall enter upon the heire, the meaning is, that

Sect. 633.

Whittingham's case, ubi supra.

HE reason here HE reason here renaded dred by Littleton is, for that the husband cannot enter in his owne right, but in the right of his wife; and the heire of the husband cannot enter, for no right or title descends unto him, and the wife in this case shall take benefit of the nonage of her husband, and enter into the Iand.

If an infant be tenant for another man's life, and make a feoffement in fee, and cefty que wie dieth, the infant himselfe fhal not enter, because he hath no right at all.

ITEM, si seme ALSO, if a woman inheritrix que ad inheritrix hath a un baron, quel ba- husband who is within ron est deins age, et il age, and hee beeing esteant deins age fait within age maketh a un seoffment de les seossement of the tenetenements son seme en monts of his wise in fee, et morust, il ad fee, and dieth, it hath este question, si la feme beene a question, if poit enter, ou non, the wise may enter or &c. Et il semble a not, &c. And it seemascuns, que l'entry la eth to some, that the fonce

"The remaining part of the above Section is not in L. and M. nor Roh. nor in Pynfon, nor MSS. But in all, the cafe of the grandfather, father, and son, Sect. 637. is here inserted, with some small variation.

yet it extends to tenants by statute-merchant, statute-staple, tenant at will, and tenant by sufferance; because all these have a possession. But he observes, that it is otherwise of a bailish for he has no possession at all.—Several other authorities will be offered to prove this point in a subsequent part of this note; one more authority only shall be mentioned here. Mr. Knowler in his argument for the defendant in the case above reserved to, seems, with reason, to lay great stress upon it. It is to. Ed. IV. 85 9. In trelipals, the defendants said, that one M. was seised in his demesse as of sec, and leased to him for his life. The plaintiff said, that long before M. had any thing in the land, D. was feifed in fee, and leafed to E. for life; that E. died, and thereupon the reversion descended upon Jane his daughter, who married M.; that M. granted the reversion to the desendant for life; that the tenant attorned; that M. died, and then Jane granted the reversion to the plaintill, and the tenant attorned; whereupon he (the plaintiff) entered, and was feifed till the defendant made the trespals without this, that M. whom the desendant supposes to have leafed to him, was feifed in his demelie as of fee. It is to be observed, that the leafes mentioned here, being for lives, were necessarily created by livery. The question before the court therefore was, Whether want of seisin in a section was a good pleas All the judges held it was not a and that the plaintiff thould have pleaded generally ne leffe pas. And Littleton expectly fags there, that if a man pleads a fuoffment, it is no plea to fav, that the fuoffor had nothing at the time; he can only plead n'elder fit pas. - Here then we have the most decisive evidence, that from the reign of Henry II. to the present time, the courts of judicators and the writings of the professors of the law are perfectly agreed, in confidering Teoffments as made with the same cerements. and attended with the same esticacy and operation. It follows from this, that it can be no argument against their having the establish and operation contended for in the particular inflance now in question—that at a period anterior to that mentioned here, the were made (if that really was the cafe) with more notoriety and ceremony than they are now .-- As to the ficond objection, that the passinges in the books which speak of tenants for years and others having estates less than of freehold, creating estates of freehold in the fcoffee by diffeifin, are to be understood as referring only to a diffeifin by election;—lord Mansfield, on his entering into this part of the argument, observes, that the precise definition of what constituted that diffeitin which made the diffeitor the tenant to the demandant's pracipa, though the right owner's entry was not taken away, was once well known, but that it is not now to be found. Most unquestionably there are many cases in which it would now be difficult, perhaps impossible, to say with certainty, whether they amounted to an actual diffeifin, according to the doctrine of the old law; yet furely many cafes may be flated, which by the most conclusive and satisfactory reasoning may be thewn to be actual diffeiting, according to that law. Perhaps the following observations may serve to establish a general rule for distinguishing those acts which amount to actual dissertions, from those

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