

¶ 4 Co. 50.b.; ante 17.b. case may create an Estate tail, as appeareth by 39 Ass.p.20.hereafter mentioned. And yet if a man give lands to A. & hæredibus de corpore suo, the remainder to B. in forma prædicta, this is a good estate tail to B. for that in forma prædicta do include the other. If a man letteth lands to A. for life, the remainder to B. in tail, the remainder to C. in forma prædicta, this remainder is void for the uncertainty. But if the remainder had been, the remainder to C. in eadem form, this had been a good Estate tail, for Idem semper antecedenti proximo refertur. If a man giveth lands or tenements to a man & semini suo, or exitibus vel prölibus de corpore suo, to a man and to his seed, or to the issues and children of his body, he hath but an estate for life, for albeit that the statute prohibeth, that Voluntas donatoris secundum formam in charta doni sui manifeste expressam de carero obseruetur, yet that will and intent must agree with the rules of law. And of this opinion was our Author himself, as it appeared in his learned reading aforesaid upon this statute: Where he holdeth, if a man giveth land to a man Et exitibus de corpore suo legitime procreatis, or semini suo, hath but an estate for life, for that there wanteth want of Inheritance.

¶ 7 Co. 41.
(a) E 3. tit. breve 743.
a E. 3. tit. Estates.
(d) 12 H. 4. 3.
(c) 37 H. 6. 15.
(f) 5 H. 5. 6.
¶ Lib. 7. 41.
(g) 12 H. 4. 2. per Horton.
¶ Post. 27.a. 26.b. 220.a.

¶ De son corps. These words are not so strictly required but that they may be expressed by words that amount to as much: for the example that the Statute of W. 2. putteth hath not these words (de corpore) but these words [hæredibus] viz. Cum aliquis dat terram suam alieni viro & ejus uxori & hæredibus de ipsis viro & muliere procreatis. If lands be given (c) to B. & hæredibus quos idem B. de prima uxore sua legitime procrearet. This is a good estate in especial tail (albeit he hath no wife at that time) without these words (de corpore.) So it is (d) if lands be given to a man, and to his heirs which he shall beget of his wife: (c) or to a man & hæredibus de carne sua, or to a man & hæredibus de se. In all these cases these be good estates in tail, and yet these words de corpore are omitted.

¶ It is holden (g) by some opinion, that if there be Grandfather, Father and son, and lands are given to the Grandfather, and to his heirs begotten by the Father, the Father dieth, the grandfather dieth, the son is in as heir to the grandfather begotten upon the body of his father, and the wife of the grandfather in that case shall be endowed. But certain it is, that in some cases one shall have the land per formam doni that is not issue of the body of the Donee, which see Section 30.

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

¶ 7 Co. 41.
18 E. 2. tit. Breve 838.
23 E. 3. 28.

Sect. 16.

(a) H. 7. 10. 1. E. 3.
Formdon 30. Pl. Com. 35.

(b) Lib. 1. fo. 120 Chudley's case 40 Ass. pl. 13.
34 Ass. Pl. 1. Fleta lib. 5.
c. 34.

¶ Plow. 35.a. ¶ Post. 25.b.
¶ F.N.B. 205b. ¶ Post.
204.d. ¶ 1 Roll. 419.

¶ A Un home & sa femme. (a) Then put the case that lands be given to a man and a woman unmarried, and the heirs of their two bodies: for the apparent possibility to marry, they have an estate tail in them presently. (b) So it is where lands be given to the husband of A. and to the wife of B. and to the heirs of their bodies, they have presently an estate in tail, in respect of the possibility. If a feme sole do enfeoff a married man causa matrimonii prælocuti it is good for the possibility. But put the case that the premisses and the habendum be in other manner than Littleton hath put, and let us see

Tenant en Taille spaciele est lou tgs ou Tenements sont dones a un homme & a sa femme, & a les heires de lour deux corps engendres, en tel cas nul poet inherit per force de le dist done, fors ceux que sont engendres perentre eux deux. Et est appelle special Taille, pur ceo que si la femme devy, & il prent au feme, & taketh another wife ad issue, l'issue del se. and have issue, the

Of Fee simple.

cond feme ne sera sue of the second wife
jammes inheritable shall not inherit by
p force d' tiel done, ne force of this gift, nor
auti lissue del second also the issue of the
Baron, si le prim Baron de die.

(c) As if a man in the premisses give lands to another and the heirs of his body, habendum to him and his heirs for ever; It hath been holden that in this case he hath an estate tail, and a fee simple expectant And so (it is said) via versa, if lands be given to a man and his heirs in the premisses, habendum to him and to the heirs of his body, that he hath an estate tail, and a fee simple expectant. But vid.lib. 8.fo. 154. b. otherwise re= solved, ut patet ibi. (d) If lands be given to B. and his heirs, to have and to hold to B. and his heirs, if B. have heirs of his body, and if he dye without heirs of his body, that it shall revert to the Donor, this is adjudged an estate tail, and the reversion in the Donor. (e) For voluntas donatoris in charta doni sui manifeste expressa obseretur, and therefore in the case next precedent; if these or the like words be added (and if he dye without heirs of his body, that the lands shall revert to the Donor) that then the habendum shall by authority of divers books be construed upon the whole deed to be a limitation or a declaration, what heirs are meant in the premisses, to inherit, and that in that case the Reversion is in the Donor. (f) If a man make a Charter of feoffment of an acre of land to A. and his heirs, and anno= her deed of the same acre to A. and the heirs of his body, and deliver seisin according to the form and effect of both deeds, in this case he cannot take a fee simple only, as some hold, for that liberty was made according to the deed in tail, as well as to the charter in fee, neither can he enure only to the deed of estate tail with a fee simple expectant, for that liberty was made as well upon the deed in fee simple, as the deed in tail. Therefore others hold, That in that case it shall enure by moieties, that is, to have an estate tail in the one moiety, with the fee simple expectant, and a fee simple in the other moiety; and so the liberty shall work immediate= upon both deeds.

Sect. 17.

Et mesme le maner est lou tenements sont do= nes per un home a un autre ove un feme, que est la file ou cou= sin au donour in frankmarriage, l'quel son ad un inherit= ance per ceur pa= oit (frankmarriage) ceo annexe, comment ne soit expresse= ment dit, ou reherce= n le done, cestasca= oir, que les donees verot les tenemets eur & a lour heires entre eux deur en= endres. Et ceo est it especial taile, pur que l'issue del se=

In the same man= ner it is, where tenements are given by one man to another, with a wife (which is the daughter or cousin to the giver) in frankmarriage, the which gift hath an Inheritance by these words (frankmarriage) annexed unto it, although it be not expressly said or rehearsed in the gift (that is to say) that the Donees shall have the tenements to them and to their heirs between them two begotten. And this is called espec= ial Tail, because

what the law is in these cases.

(c) 21 H 6.7. + 1 Rec. Rep. 38. +

+ Perk. 18.170. Cout. + 2 Sid. 76.b. + 8 Co. 56.b.

+ 8 Co. 154. + Plow. 43.b.

+ 2 Roll. 668. Contra.

(d) 30 Ass. p. 47.

35 Ass. p. 14. 37 Ass. 15.

5 H. 5.6.

+ 2 Roll. 68. + Cro. 2.591.

290.a. + 2 Cro. 591. 290.

427.448.

+ Plow. 441.

(f) 2 H. 6.25. 45 E. 3.22.

+ Vid. 5 Co. 25. Where

two Fines are levied

+ Post. 112.b. + 3 Cro.

9.2.49.

A Un home ove un feme. Albeit

the gift is made of the lands to the man with his daughter, &c. yet is the gift good to them both in special tail, and therefore that of Stephen de la More in (g) 5 E. 3. is very remarkable, where the case was, that Robert gave the reversion of lands which Agnes his wife did hold for her life to Stephen de la More, Habendum post mortem dictæ Agnetis in liberum maritagium cum Johanna filia ejusdem Roberti, and it is adjudged that it is a good estate tail: wherein three things are to be observed: First, that Joan the daughter took with her husband an estate in especial tail, albeit she were named but under a cum viz. cum Johanna, &c. 2. That that cum doth come after the habendum, for that it is but all one sentence. 3. That these words, in liberum maritagium, do create an estate of inheritance in especial tail, as Lit= deton

Vid. Sect. 19.20.

+ 2 Roll. 67.

+ 2 Inst. 334.

5 E. 3.17.
(g) This case is vouched in Pl. Com. 158. to be in 4 E. 3. which being not found in that year it is there so left without any further reference. but you shall find it as above said in 5 E. 3.17.

+ 1 Cro. 434.

¹ Plow. 58.2.
W.2. cap. 1.
¹⁹ E.3. tit. t.ii.

¹ Roll. 840.
(b) 6 E.3. 23.
Fitz. N.B. 172.
7 E.4. 12.
15 E.2. Cui in vita.
Sect. 24.
Post. 219.b.
Post. 176.a.
(1) 4 E.3. 8.
31 E.1. talle 30.
Bracton. lib. 2. cap. 7.
(k) 22 R.2. tit. dilcent. 50.
Fitz. N.B. 212.
9 H.6. 35.b.
W.2. ca. 1. acc.
¹ 2 Roll. 66.
(1) Temp. H.8. Br frank-
mat. 11. 13 E.1. formedon
63.
¹ 1 Roll. 840. ¹ 9 Co. 14.
Vid. 32 E.1. talle 25.
2 E.2. Feoffment &
faits.
¹ 1 Roll. 840.
17 E.3. 5.a. 45 E.3. 20.
(n) 20 E.2. aid. 174.
31 E.3. Gard. 216.
(o) Bract. lib. 2. cap. 7.
32 E.1. talle 31.
13 H.4. 7. 4. 411. 6. 17.
26 Ail. 66. 31 E.3. gar. 29.
26 Ail. p. 66 per Wilbyc.
(o) Bract. lib. 2. ca. 34 &
39. & lib. 2. ca. 7. nu. 3. & 4.
Glanvil. lib. 7. ca. 1. &
ca. 18.

Fleta lib. 3. ca. 1.

30 F.1. tit. Formedon 66.
adjudg. acc.

¹ 2 Inst. 336.
31 E.3. tit. Gard. 116.
Mitr. cap. 2. Sect. 15. co.
Post. 18.b.
7 H.3. Dow. t. 202.

leton saith, Le donee ad un inheritance per reason de ceux paroix (frankmarriage) a ceo annexe, comment que ne soit expressement dit, &c. But this had need of some interpretation, so if lands be given by these words (in frankmarriage) according to the Rules of Law, then do these words create an Estate of Inheritance in special tail: for the consideration of marriage is in that case more favoured in Law than any other consideration: But though the gift be in these words, yet if it be not consonant to the Rules of Law in other things requisite thereunto, then they create but an Estate for life. And therefore to speak once for all, Four things be incident to a frankmarriage, First, that it be given for consideration of marriage either to a man with a woman, or, as some have held, to a woman with a man: For in (h) 6 E.3. 33. In Peirs de Saltmarsh his case, a man gave land to his son in frankmarriage, and Fitz. N. B. 172. taketh the Law so also. And 7 E.4. 12 per Moyle against a new opinion in temps H.8.Br. tit. Frankmarriage the former books being not remembred. Secondly, that the woman or man, that is the cause of the gift (i) be of the blood of the Donor, but it may be made as well after marriage as before, and it may be made with a widow, &c. Thirdly, if the gift be made of such a thing as lyeth in tenure, that the Donees hold of the Donor at the time of the estate in frankmarriage made. A Rent service (k) may be given in Frankmarriage because it may be holden. And so may a Rent charge or Rent seck, as Fitz. N. B. holdeth, and it appeareth in our books that a Common was granted in Frankmarriage. Fourthly, that the Donees shall hold freely of the Donor till the fourth degree be past. And therefore if land be given to a woman, with a son of the Donor in frankmarriage, there passeth an Inheritance; but if the Donee that is the cause of the gift be not of the blood of the Donor, then there passeth but an Estate for life if liberty be made. Also if (l) lands be given to a man with a woman of the blood of the Donor in liberum maritagium the remainder in fee either to a stranger or to the Donees, they have no estate tail, because there is no tenure of the Donor, but if (m) in that case, the remainder had been limited to another in tail, reserving the Reversion in fee to the Donor, then the said words (in liberum maritagium) create an Inheritance, because the Donees hold of the Donor. And this is the cause that it is holden, That a man cannot devise land in Frankmarriage because the Donee cannot hold of the Donor. And Cest que use before the statute of 27 H.8. could not have made a gift in Frankmarriage, because the Reversion was in the offices. (n) And if the Donor doth give lands in liberum maritagium reserving a Rent, this reservation shall take no effect till the fourth degree be past, but the Frankmarriage is good, for if the reservation should be good, then could not the Donees have an estate tail for want of words of the heirs of their bodies.

¶ En Frankmarriage. Liberum maritagium, Free marriage; Maritagium is taken for Fee tail, and divideth maritagium into liberum & servitio obligatum: and hereditith agreth Braeton (o) lib. 2. cap. 34. 39. Maritagium est aut liberum aut servitio obligatum, & lib. 2. cap. 7. nu. 3 & 4. liberum maritagium dicitur, ubi donator vult quod terra sic data quieta sit & libera ab omni seculari servitio. And so, before Bracton, sat Glanvil.lib. 7. cap. 18. Maritagium autem aliud nominatur liberum aliud servitio obnoxium; liberum dicitur maritagium quando aliquis liber homo aliquam partem terrae suae dat cum aliqua muliere in maritagium, ita quod ab omni servitio terra illa sit quieta, &c. And after both of them Fleta that followeth them both, lib. 3. cap. 1. saith, Est autem quoddam maritagium liberum ab omni servitio solutum donatori vel ejus haeredi, &c. Et est similiter maritagium servitio obligatum & oneratum, &c. And these words (in liberum maritagium) are such words of Art, and so necessarily required, as they cannot be expressed by words equivalent, or amounting to as much. As if a man give lands to a man with his Daughter in connubio soluto ab omni servitio, &c. Yet there passeth in this case but an Estate for life, for seeing that these words (in liberum maritagium) create an Estate of Inheritance against the general Rule of Law, the Law requireth that they should be legally pursued. But then it may be demanded if a man had given lands at the Common Law, in libero maritagio, whether had the Donees a fee simple without these words (heirs) for that it appeareth by that which hath been said before, that all gifts in tail were fee simple at the Common Law, and that the statute of W.2. did not create any estate in fee tail, but out of an estate in fee simple. To this it is answered that these words (in liberum maritagium) did create an Estate in fee simple at the Common Law: and it is holden in 31 E.3. gard. 116. Per ceux paroix in frankmarriage les donees averont les terres a eux & a lour heires perenter eux engendres, & ceo est die especial tail. But yet between Donees in Frankmarriage and other Donees in special tail there be many notable diversities. If the King give land to a man and a woman, and the heirs of their two bodies, and the woman dye without Issue, yet shall the man be Tenant in tail apres possibility. But if the King give Land to a man with a woman of his kindred in a Frankmarriage, and the woman dyeth without Issue, the man in the Kings case shall not hold it for his life, because the woman was the cause of the gift, but other-

wise it is in the case of a common person. If lands be given to a man and a woman in especial tail and they are divorced causa præcontractus, both shall hold the lands for their lives; But in ^{17 H. 4. 16.}
 (p) case of frank marriage if they be so divorced, the woman shall enjoy the whole land, because ^{14 Co. 29. ¶ 5 Co. 98.}
 he was the cause of the gift. If lands holden in Socage (q) be given in especial tail, and the ^{(p) 13 E. 3. tit. Ass.}
 Donees dye the issue being within the age of 14 years, (r) the next of kin of the part of the ^{19 E. 3. Ass. 83.}
 Father or part of the Mother which can hap the custody shall have it; but in case of frank- ^{12 Ass. 22.}
 marriage the heir of the part of the Mother shall have it, because as it hath been said she was ^{19 Ass. 2.}
 the cause of the gift. ^{8 E. Ass. 45.}
^{¶ F. N. B. 204. ¶ Ch. 47.}
^{¶ Post. 235. a Finch. 177.}
^{(q) Pl. Com. Carrills case.}
^{(r) 17 H. 3. tit. gard. 146.}
^{27 E. 3. 79.}

Sect. 18.

ET nota, quod hoc verbum (Talliare) idem est quod ad quandam certitudinem ponere, vel ad quoddam certum hæreditamentum limitare. Et proptere li- mit & mis en certain, quel issue inherite- ra per force de tiels dones, & come longe- ment l'inheritance en- turera, il est appellé à Latine, feodium talliatum i. hæreditas in quandam certitudinem limitata. Car si tenant in general tail moyust sans issue, l' donor ou ses heirs poïet entrer cõe en leur reversion.

by this limitation (hæredi) in the singular number the Donees common law. Vide registrum judiciale, fol. 6. a gift made to a man, & hæredi malculo de corpore suo.

And note that this word (Talliare) is the same, as to set to some certainty, or to limit to some certain inheritance. And for that it is limited and put in certain, what issue shall inherit by force of such gifts, and how long the Inheritance shall indure, it is called in Latin, *feodium talliatum, i. hæreditas in quandam certitudinem limitata.* For if tenant in general tail dieth without issue, the Donor or his heirs may enter as in their reversion.

ET nota. This, in ^{¶ Ante 12.b.}

our Author throughout his three Books, betokens some notable point of instruction worthy of more special observation, which is often ([¶]) used by him as you may perceive by the Sections noted in the Margent.

(f) S. Q. 18. 37. 42. 43. 49.
 50. 64. 72. 29. 90. 104. 108
 114. 116. 147. 158. 161.
 168. 170. 183. 254. 279.
 346. 387. 452. 467. 618.
 619. 637. 642. 670. 682.
 684. 711. 717. 719. 738.
 Wellm. 2. cap. 3.
 Pl. Com. 251. a.

En Feodium tallia- tum, i. hæreditas in quandam certitudinem limitata. Here our Author doth interpret what Feodium talliatum is. Of all the estates talli^{most corrected or restrained} that I find in our books, is the estate tail in 39 Ass. Pl. 20. Where lands were given to a man and to his wife and to one heir of their bodies lawfully begotten, and to one heir of the body of that heir only; This case being adjudged in the point is an exception (some say) out of the general rule put before by Littleton Sect. 13. that all estates tail were fee simple at ^{Sect. 13.} Vid. Pl. Com. sc. 29. b. the common law, for (say they) the Donees had not had a fee simple at the Registrum Judic. fo. 6. Regist. Judic. fo. 6.

Sect. 19.

EN mesme l' ina- ner est del te- nant en special tail, &c. Car en chescun done en l' taile sauns pluis ouster dire, le reversion del fee sim- ple est en le donor.

In the same manner it is of the tenant in especial tail, &c. For in every gift in tail without more saying, the reversion of the fee simple is in the donor. And the Donees and of the Donor to a reversion in him expectant upon the estate tail,

En chescun done ^{¶ 2 Inst. 33. 1. 333.} en tail sans pluis ouster dire, le reversion del fee sim- ple est en le donor. This is brought by the construction of the Statute of W. 2. cap. 1. which hath turned the fee simple of the Donee into a particular estate of inheritance, and the possibility [¶] of the Donor to a reversion in him expectant upon the estate tail,

(a) 12 E.4.23.5 H.7.14.
West 2.ca.13.Pt.Com.
247.248.211.562.2 E.2.
tit. rescit. 142.
33 H.6.27. 39 E.3.18.
45 E.3.20.

‡ Post. 142.6. ‡ Plow.
158.162.196.197.
‡ Cro.Cat.400.

so as there be two inheritances of one land, yet this was doubted in our books (c) and there resolved according to Littleton. But I see no cause wherefore that point should be drawn in question, for at the same Session of Parliament (in which the Statute de donis conditionalibus was made) viz. ca. 3. it is expressly said, vel per donum in quo reservatur reversio, so as by the judgment of the same Parliament a reversion was settled in the Donor.

C Le reversion del fee simple est en le donor. A reversion is where the residue of the estate always doth continue in him that made the particular estate, or where the particular estate is derived out of the estate, as here in the case of Littl. Tenant in fee simple, maketh gift in tail, so it is of a lease for life, or for years. If a man extends Lands by force of a Statute Merchant, staple, recognizance or Elegit, he leaveth a reversion in the Convisor. But since Littleton wrote, the description must be more large upon the Statute of (a) 27 H.8. for at this day, if a man leiseth of lands in fee make a feoffment in fee, (and depart with his whole estate) and limit the use to his daughter for life, and after her decease, to the use of his son, in tail, and after to the use of the right heirs of the feoffor: In this case, albeit he departed with the whole fee simple by the feoffment, and limited no use to himself, yet hath he a reversion, (b) for whosoever the ancestor takes an estate for life, and after a limitation is made to his right heirs, the right heirs shall not be purchasers. And here in this case when the limitation is to his right heirs, and right heir he cannot have during his life (for non est haeres viventis) the law doth create an use in him during his life, until the future use cometh in esse, and consequently the right heirs cannot be purchasers, and no diversity when the Law creates the estate for life, and when the party. And all this was adjudged between (c) Fenwick and Mitford in the Kings bench, and if the limitation had been to the use of himself for life, and after to the use of another in tail, and after to the use of his own right heirs, the reversion of the fee had been in him, because the use of the fee continued ever in him: and the Statute doth execute the possession to the use in the same plight, quality, and degree, as the use was limited.

(d) If a man make a gift in tail, or a lease for life, the remainder to his own right heirs, this remainder is void, and he hath the reversion in him, for the ancestor during his life beareth in his body (in judgment of law) all his heirs, and therefore it is truly said, that haeres est pars antecessoris. And this appeareth in a common case, that if land be given to a man and his heirs, all his heirs are so totally in him, as he may give the lands to whom he will.

(e) So it is if a man be leiseth of lands in fee, and by indenture make a lease for life, the remainder to the heirs male of his own body, this is a void remainder; for the Donor cannot make his own right heir a purchaser of an estate tail, without departing of the whole fee simple out of him: as if a man make a feoffment in fee to the use of himself for life, and then to use of the heirs male of his body, this is a good estate tail executed in himself, and the limitation is good by way of use, because it is raised out of the state of the Feoffees, which the Feoffor departed with, and that is apparent, for a limitation of use to himself had without question been good.

(f) If man make a feoffment in fee to the use of himself in tail, and after to the use of the Feoffee in fee, the Feoffee hath no reversion, but in nature of a remainder, albeit the Feoffee have the estate tail executed in him by the Statute, and the Feoffee is in by the Common Law,

their issue shall do to the Donor, and to his heirs the like services, as the Donor doth to his Lord next Paramount, except the Donees in frankmarriage who shall hold quietly from all manner of services (unless it be for Fealty) until the fourth degree is past and after the fourth degree is past the issue in the fifth degree, and so forth the other issues after him, shall hold of the Donor, or of his Heirs, as they hold over, as before is ouster, cœ il è abat dit. said.

(a) 27 H.8.ca.10.
‡ Cro.Cat.24.
‡ 1 Roll.627.ante 13.b.
‡ Post.376.‡ 1 Co. 104.
b. ‡ 2 Co. 91. ‡ 2 Roll.
417. 1 Leon 192.
‡ Post. 272.
(c) Tr. 3 Eliz.inter Fen-
wick & Mitford.
32 H.3.gard.93.
28 H.8.Dier.8.9.10. &c.
Bucknham's case.
‡ 1 Roll. 828.
5 Marie. Dier.163.
(d) 1 H.5.8 4 H.6.20.
9 Eliz. Dier Bromleys
case
‡ 1 Roll.827. ‡ Dyer
156.b.

(e) Dyer.5 Marie 159.
‡ Hob.30.33.
Grafsold's case adjudge.
Benlows Serjeant in his
report agreeth.
‡ Mod.Rep.237.
‡ 1 Roll.Rep.240.
(f) 20 Eliz.Dyer

To conclude this point (g) whosoever is seised of land, hath not only the Estate of the land (g) 13 H.7.6.
in him, but the right to take profits which is in nature of the use, and therefore when he makes a feoffment in fee without valuable consideration to divers particular uses, so much of the use as he disposereth not, is in him as his ancient use in point of reverter. As if a man be seised of two Acres, the one holden by Knights service, by priority, and the other by Knights service holden by posterity, and maketh a feoffment in fee of both Acres to the use of himself and his heirs, the old use continued in him, and the priority and posterity remain. So it is of lands of the part of the mother, the use shall go to the heir of the part of the Mother, which could not be, if it were not the old use, but a thing newly created: the like law of lands, of the custom of Borough-english, Gavelkind, &c.

Les donees & lour issues ferrent al donor & a ses heirs autiels services come le donor fait a son seignior procheine a luy paramount, + Post. 143.a: 2 Roll. 402. The reason of this is, that when by construction of the said Statute, there was a reversion settled in the Donor for that the Donee had an estate of inheritance, the Judges resolved that he should hold of his Donor, as his Donor held over: as if the tenant had made a feoffment in fee at the common law, the feoffee should have holden of the feoffor as he held over, and before the statute of W. 2. the Donee had holden of the Donor as of his person, and now of him as of his reversion: but if a man make a lease for life, or years, and reserve nothing, he shall have fealty only and no rent, though the lessor hold over by rent, &c. And this that Littleton saith, is regularly true, if the Donor maketh no special reservation, for then the special reservation excludes the tenure which the law would create. As if tenant by Knights service maketh a gift in tail reserving fealty and rent, the Donee shall hold in socage by fealty and rent, and not by Knights service. But if a man hold land of the King in grand serjanty, and maketh a gift in tail generally: in this case the Donee shall not hold of the Donor by grand serjanty, because no man can hold by grand serjanty, but of the King only, as hereafter shall be said, and therefore seeing grand serjanty doth include Knights service, he shall in that case hold of the Donor by Knights service. If a man seised of land in the right of his wife holden by Knights service, giveth the same lands in tail generally, the Donee shall not hold of him by Knights service, because his wife held the land, and he had nothing but in her right. And in that case the Baron hath gained a new reversion by wrong, and therefore such a Donee shall do fealty only.

A. seised of two acres of land, holdeth the one of B. by Knights service, and twelve pence Rent, and the other of C. in Socage and one penny Rent, and makes a gift in tail of both Acres without any express reservation of any tenure. In this case the Donor hath but one reversion. And yet he shall make several abutments, because there be several tenures created by law in respect of the several tenures over: and abutment is made in respect of the tenures.

Lord Meline and Tenant, the Tenant holdeth by four pence, & the Meline by twelve pence, + Doc. Plac. 53. the Tenant makes a gift in tail without reserving any thing, by reason whereof he holdeth by four pence, in respect of the tenure over. Afterwards the reversion escheats, now shall the Donee hold by twelve pence, for the Meline which was four pence is extinct, and the law reserved the tenure upon the gift in tail in respect of the Meline, and when the Meline is extinct, the former Rent between the Donor and Donee is extinct also, and then by the same reason that the Donee shall take advantage, if the Donor by release or confirmation had holden by lesser services, by the same reason he shall be prejudiced, when he holdeth by greater services. 49 E.3.10.

Forsprise les donees en Frankmarriage. It is to be understood, that although the land be given in liberum maritagium, in free marriage generally, yet first the law doth make a limitation of this word (free) viz. till the fourth degree be past, for the reason that our author here yieldeth. And 2. albeit it be free marriage, yet the Donees and their issues until the fourth degree be past shall do fealty, for that is incident to every tenure (except Frankalmoigne) and cannot be separated from it, and therefore the Donees and their issues shall hold as freely till the fourth degree be past as the Donor can make it. See more of this in the chapter of Frankalmougne.

Sect.20.

Etes degrees en frankmarriage. **A**nd the degrees in frankmarriage seront accompts shall be accounted in tel manner. S. de this manner, viz. from

Where Littleton (a) vid. Sect. 17. 19. 138. saith (a) that the Donees in frankmarriage shall hold by fealty only until the 4th. degree

Bracton lib. 2. fol. 21.

Britton cap. 119.

Fleta lib. 3. cap. 11.

& lib. 6. cap. 12.

Vide Sect. 17. 20.

Ante 21.b. + Post. 57.b.

276.a. 178.a.

so as there be two inheritances of one land, yet this was doubted in our books (r) and there resolved according to Littleton. But I see no cause wherefore that point should be drawn in question, for at the same Session of Parliament (in which the Statute de donis conditionalibus was made) viz. ca. 3. it is expressly said, vel per donum in quo reservatur reversio, so as by the judgment of the same Parliament a reversion was settled in the Donor.

(a) 12 E.4.23.5 H.7.14.
West 2.ca.13.P1.Com.
247.248.211.562.2 E.2.
tit. recd. 142.
33 H.6.27. 39 E.3.18.
45 E.3.20.

¶ Post.142.6. ¶ Plow.
158.162.196.197.
¶ Cro.Cat.400.

C Le reversion del fee simple est en le donor. A reversion is where the residue of the estate always doth continue in him that made the particular estate, or where the particular estate is derived out of the estate, as here in the case of Littl. Tenant in fee simple, maketh gift in tail, so it is of a lease for life, or for years. If a man extends Lands by force of a Statute Merchant, Staple, recognizance or Elegit, he leaveth a reversion in the Conusor. But since Littleton wrot, the description must be more large upon the Statute of (a) 27 H.8. For at this day, if a man seise of lands in fee make a Feoffment in fee, (and depart with his whole estate) and limit the use to his daughter for life, and after her decease, to the use of his son, in tail, and after to the use of the right heirs of the Feoffor: In this case, albeit he departed with the whole fee simple by the feoffment, and limited no use to himself, yet hath he a reversion, (b) for whosoever the ancestor takes an estate for life, and after a limitation is made to his right heirs, the right heirs shall not be purchasers. And here in this case when the limitation is to his right heirs, and right heir he cannot have during his life (for non est haeres viventis) the law doth create an use in him during his life, until the future use cometh in esse, and consequently the right heirs cannot be purchasers, and no diversity when the Law creates the estate for life, and when the party. And all this was adjudged between (c) Fenwick and Mitford in the Kings bench, and if the limitation had been to the use of himself for life, and after to the use of another in tail, and after to the use of his own right heirs, the reversion of the fee had been in him, because the use of the fee continued ever in him: and the Statute doth execute the possession to the use in the same plight, quality, and degree, as the use was limited.

(d) If a man make a gift in tail, or a lease for life, the remainder to his own right heirs, this remainder is void, and he hath the reversion in him, for the ancestor during his life beareth in his body (in judgment of law) all his heirs, and therefore it is truly said, that haeres est pars antecessoris. And this appeareth in a common case, that if land be given to a man and his heirs, all his heirs are so totally in him, as he may give the lands to whom he will.

(e) So it is if a man be seised of lands in fee, and by indenture make a lease for life, the remainder to the heirs male of his own body, this is a void remainder; for the Donor cannot make his own right heir a purchaser of an estate tail, without departing of the whole fee simple out of him: as if a man make a feoffment in fee to the use of himself for life, and then to use of the heirs male of his body, this is a good estate tail executed in himself, and the limitation is good by way of use, because it is raised out of the state of the Feoffees, which the Feoffor departed with, and that is apparent, for a limitation of use to himself had without question been good.

(f) If man make a feoffment in fee to the use of himself in tail, and after to the use of the Feoffee in fee, the Feoffee hath no reversion, but in nature of a remainder, albeit the Feoffee have the estate tail executed in him by the Statute, and the Feoffee is in by the Common Law, which is worthy of observation.

four issues ferront al their issue shall do to donor & a ses hestres the Donor, and to his autels services, come heirs the like services; le donor fait a son as the Donor doth to Seignor prochein a sorye les donees in frankmarriage, les queur tiendront quelement de chescun manner de service, si non que soit per seal tie, tanque l' quart de gree soit passe, & apres ceo que le quart de gree soit passe l'issue ē le cinqu degree, & issint ouster lauters des issues apres lui, tien dront del don ou ses heirs come ils teignot over, as before is ouster, cōe il ē abat dist. said.

(a) 27 H.8.ca.10.
¶ Cro.Cat.24.

¶ 1 Roll.627.ante 13.b.
¶ Post.376. ¶ 1 Co. 104.
b. ¶ 2 Co. 91. ¶ 2 Roll.

417. 1 Leon 182.

¶ Post. 272.

(c) Tr.31Eliz.inter Fenwick & Mitford.
32 H.3.gard.93.

28 H.8.Dier.8.9.10. &c.
Buckenham's case.

¶ 1 Roll. 828.

5 Marie. Dier.163.

(d) 1 H.5.8 4 H.6.20.
9 Eliz. Dier Bromleys case.

¶ 1 Roll.827. ¶ Dyer
156.b.

(e) Dyer.5 Marie 159.
¶ Hob.30.33.

Grafswolds case adjudge. Benlows Serjeant in his report agreeeth.

¶ Mod.Rep. 237.

¶ 1 Roll.Rep.240.

(f) 20 Eliz.Dyer

To conclude this point (g) whosoever is seised of land, hath not only the Estate of the land in him, but the right to take profits which is in nature of the use, and therefore when he makes a Feoffment in Fee without valuable consideration to divers particular uses, so much of the use as he disposeth not, is in him as his ancient use in point of reverter. As if a man be seised of two Acres, the one holden by Knights service, by priority, and the other by Knights service holden by posterity, and maketh a feoffment in fee of both Acres to the use of himself and his heirs, the old use continued in him, and the priority and posterity remain. So it is of lands of the part of the mother, the use shall go to the heir of the part of the Mother, which could not be, if it were not the old use, but a thing newly created: the like law of lands, of the custom of Wrough=english, Gavelkind, &c.

(g) 13 H.7.6.
28 H.8.Dyer. 12.
† 2 Roll.774. 3 Co.81.b.
‡ 2 Cro.201.‡ Post.271.b.
5 E.4.2.
Lib.1.76.84.85.100.&c.
Chudley.
Lib.2.56.57.58.77.78.
Lib.4.22.Lib6.34.43.
‡ Hob.31.ante 3.a.

Les donees & lour issus feront al donor & a ses heirs autiels services come le donor fait a son seignior procheine a luy paramount, + Post.143.a:2 Roll.401.
The reason of this is, that when by construction of the said Statute, there was a reversion set-
led in the Donor for that the Donee had an estate of inheritance, the Judges resolved that he
should hold of his Donor, as his Donor held over: as if the tenant had made a Feoffment
in fee at the common law, the Feoffee should have holden of the Feoffor as he held over, and
before the Statute of W. 2. the Donee had holden of the Donor as of his person, and now of
him as of his reversion: but if a man make a lease for life, or years, and reserve nothing, he
shall have fealty only and no rent, though the Lessor hold over by rent, &c. And this that Little-
ton saith, is regularly true, if the Donor maketh no special reservation, for then the special re-
servation excludes the tenure which the law would create. As if tenant by Knights service
maketh a gift in tail reserving fealty and rent, the Donee shall hold in Socage by fealty and
rent, and not by Knights service. But if a man hold land of the King in grand Serjanty, and
maketh a gift in tail generally: in this case the Donee shall not hold of the Donor by grand
serjanty, because no man can hold by grand serjanty, but of the King only, as hereafter shall be
said, and therefore seeing grand serjanty doth include Knights service, he shall in that case hold
of the Donor by Knights service. If a man seised of land in the right of his wife holden by
Knights service, giveth the same lands in tail generally, the Donee shall not hold of him by
Knights service, because his wife held the land, and he had nothing but in her right. And in
that case the Baron hath gained a new reversion by wrong, and therefore such a Donee shall
have fealty only.

A. seised of two acres of land, holdeth the one of B. by Knights service, and twelve pence + Doc. Plac.53.
Bent, and the other of C. in Socage and one penny Bent, and makes a gift in tail of both A=es without any express reservation of any tenure. In this case the Donor hath but one re-
version. And yet he shall make several abutments, because there be several tenures created by
him in respect of the several tenures over: and abutment is made in respect of the tenures.

Lord Mesne and Tenant, the Tenant holdeth by four pence, & the Mesne by twelve pence, + 2 Roll.501.
The Tenant makes a gift in tail without reserving any thing, by reason whereof he holdeth by
four pence, in respect of the tenure over. Afterwards the reversion escheats, now shall the Donee
hold by twelve pence, for the Mesnalty which was four pence is extinct, and the land reserved
the tenure upon the gift in tail in respect of the Mesnalty, and when the Mesnalty is extinct,
the former Bent between the Donor and Donee is extinct also, and then by the same reason
at the Donee shall take advantage, if the Donor by release or confirmation had holden by
other services, by the same reason he shall be prejudiced, when he holdeth by greater services. 49 E.3.103

Forsprise les donees en Frankmarriage. It is to be understood, that al-
though the land be given in liberum maritagium, in free marriage generally, yet first the law doth Bracton lib.2. fol. 21.
make a limitation of this word (free) viz. till the fourth degree be past, for the reason that our Britton cap.119.
author here yieldeth. And 2. albeit it be free marriage, yet the Donees and their issues until Fleta lib.3.cap.11.
the fourth degree be past shall do fealty, for that is incident to every tenure (except Frankal- & lib.6.cap.12.
sign) and cannot be separated from it, and therefore the Donees and their issues shall hold Vide Sect. 17.20.
as freely till the fourth degree be past as the Donor can make it. See more of this in the + Ante 21.b. + Post.57.b.
chapter of Frankalmoigne. 276.a. 178.a.

Sect.20.

Et les degrees en frankmarri-
e feront accompts shall be accounted in
tel manner. S. de this manner, viz. from

And the degrees in frankmarriage

Where Littleton (a) Vid.Sec.17.19.138.
saith (a) that 268.269.271.733.
the Donees in
frankmarriage shall hold by
fealty only until the 4th de-
gree

(b) Glanvill lib. 7. ca. 18.
Braston lib. 2 fol. 24.
Britton ca. 119.
Fleta lib. 3. cap. 11. & lib.
6. cap 2.

(c) Vid. 1^e F. 3. tit. avow-
ry 157.
3^r E. 3. cessavit. 22.
3^r E. 3. gaud. 119.
2^r H. 2. 30.

^{2.}
Pl. v. 444. f. 2 Co. 59.

degree be past, & then the issue in the fifth degree shall hold of the Donor as the Donor holdeth ever, (b) Vide Braston ubi supra, Ita quod ille cui terras licet data fuit, nullum inde faciat servicium usque ad tertium heredem & usque quartum gradum, ita quod tertius heres sit inclusus. And herewith also agreeth Fleta ubi supra. And the (c) learning of degrees set out in the civil and canon Law (wherein I find some difference) is worth the knowledge, to the end that Littleton and the law in this case may the better be understood, which I will divide into certain rules, whereof the first is; That a person added to a person in the line of Consanguinity maketh a degree. And it is to be understood, that a line is threefold, viz. the line ascending, descending, and collateral. And first for example, of the ascending, line, take the Son and add the Father, and it is one degree ascending, add the Grandfather to the Father, and it is a second degree ascending.

So as how many persons there be, take away one, and you have the number of degrees. If there be four persons it is the third degree, if five the fourth, for one must exceed, and then you have the degree. Likewise by the descending, take the Father, and add the Son, and it is one degree; then take the Son and add the Grandchild, and it is the second degree, and so likewise further. Wherein observe that the Father, Son and Grandchild, albeit there are three persons, yet they make but two degrees, because (as it hath been said) one must exceed for making a degree.

= Vid. stat. 32. & H. 8 cap.
3^r of Marriages.
= 2 Inst. 683.
= Vide 25. H. 8. cap. 22.
& H. 8. cap. 7.

It is to be noted, that in every line the person must be reckoned from whom the computation is made. And there is no difference between the Canon and Civil Law in the ascending and descending line; for those whom the Civilians do reckon in the second degree, the Canons do reckon in the first, and those whom they place in the fourth, these place in the second. Therefor-

le donor a les donees the Donor to the Donees in frankmarriage, le premier degree, pur ē que la femme que est un des donees coïstestre file, soer, ou autre cousin a le donor. Et de les donees tanque a lour issue il sera accompt le second degree, & de lour issue tanque a son issue, le tierce degree, & issint ouster, &c. Et la cause est, pur ceo que apres chesc tiel done les issues queux veignont de le donor, & les issues queux veignont de les donees apres le quart degré passe de ambideux parties en tiel forme de stre accompt, povent enter eux per la ley d saint Esglise entermarrie. Et que le donee en frankmarriage sera dit le prime degree de les quart degrés hōe poit veier en un plege sur un breve de Droit de Garde P. 31 E. 3. Lou le Pl. counta, que son tre. fief fuit seisié de cert terre, &c. & ceo tenust dun autre per service de chivaler, &c. quel dona la terre a un Ralph Holland obesqz sa soer ē frankmar. ridge, &c.

the Donor to the Donees in frankmarriage the first degree, because the wife, that is one of the Donees, ought to be daughter, sister or other collen to the donor, & from the donees unto their issue shall be accounted the second degree, & from their issue unto their issue the third degree, and so forth. And the reason is, because that after every such gift, the issues of the Donor, and the issues of the Donees after the fourth degree past of both parties in such form to be accounted may by the law of the holy Church entermarry. And that the Donee in frankmarriage shall be said to be the first degree of the four degrees, a man may see in a plea upon a Writ of Right of Ward, P. 31. E. 3. where the Pl. Pleadeth that his great Grandfather was feised of certain Lands, &c. and held the same of another by Knight service, &c. who gave the land to one Ralph Holland with his sister in Frankmarriage, &c.

If we will know in what degree two of kindred do stand according to the Civil Law, we must begin our reckoning from one, by ascending to the person from whom both are branched, and then by descending to the other to whom we do count, and it will appear in what degree they are. For example, In brothers and sisters sons, take one of them and ascend to his father, there is one degree, from the father to the grandfather, that is the second degree, then descend from the grandfather to his son, that is the third degree, then from his son to his son, that is the fourth. But by the Canon Law there is another computation, for the Canonists do ever begin from the stock, namely from the person of whom they do descend; of whose distance the question is. For example, if the question be, In what degree the sons of two brothers stand by the Canon Law? we must begin from the Grandfather and descend to one son; that is one degree; then descend to his son, that is another degree, then descend again from the grandfather to his other son, that is one degree, then descend to his son, that is the second degree; so in what degree either of them are distant from the common stock, in the same degree they are distant between themselves: and if they be not equally distant, then we must observe another Rule. In what degree the most remote is distant from the common stock, in the same degree they are distant between themselves, and so the most remote maketh the degree. And albeit the Dones be a Cousin in the third or fourth degree from the Donor, yet in this computation it maketh the first degree: gradus dicitur à gradiendo, quia gradiendo ascenditur & descenditur. And thus much of the Civil and Canon Law is necessary to the knowledge of the Common Law in this point: and herewith agreeeth our Author in the words following.

Les issues queux veignont de le donor, & les issues queux veignont de les donees apres le 4. degrée passe dambideux parties in tel forme destre account poient enter eux per le Ley de Saint Esglise enterrer. (De Saint Esglise) (b) So as hereby it appeareth, That the computation of the degrees in this case, must be according to the Canon Law. But it is necessary to be known concerning marriages betwenn persons of kindred one to another, that it is enacted (e) by the Statute of 32 H.8. that no reservation or prohibition (Gods Law except) shall trouble or impeach any marriage without the Levitical degrees.

The case vouch'd by Littleton in 31 E. 3. you shall find abridged by Fitzherbert. 116. And byt this year of 31 E. 3. was never in print till Fitzherbert did abridge it and publish it in anno 11 H. 8. and goeth under the name of broken years, yet here it appeareth by our author, that the same is of Authority in Law, as hereafter also in other places shall be ob-

(d) Brit.ca. 119. Accord.
Fleta lib.3.ca.11 & lib.6.
c.2.

(e) 32 H.8.ca.32.

Sect. 2 I.

Et tous ceur tasles abâdis, sont divers auts estates en le taile, co- sert q ne sone speci- es per expresse pa- es in le dit estatute, es ils sont prises et le equitie de le dit statute. Sicome terres sont dones given to a man, & to un home & a ses his heirs males of his corps engendres, en case his issue male

And all these Estates aforesaid be specified in the said Statute of W. 2. Also there be divers other estates in tail, though they be not by express words specified in the said Statute, but they are taken by the equity of the same statute. As if lands be

Et tous ceux

dits sont specifies en le dit statute de Westminister 2. And so it appears by the said Statute, Auxi sont divers autres estates en le taile, &c. And herewith agreeeth Carbonels Case, 33 Ed. 3. titulo taile 5.

That the Cases of the Statute are set down but for examples of estates tail, general and special, and not to exclude other estates tail, 3 E. 3. 32. 3 E. 3. 18 E. 3. 46. 18 Aff. p.5. 18 E. 3. 46. 1. Mar. Dyer. 46. Pl. Com. Scenior Bark. keys case. fo. 251. For Exempla illustrant non restinguant legem.

18 Aff. p.5. 1. Mar. Dyer. 46. Pl. Com. 251.

Equity.

[†] Co. 99. [‡] Co. 31. 50.

C Equity is a construction made by the Judges, that cases out of the letter of a Stat. yet being within the same mischief, or cause of the making of the same, shall be within the same remedy that the Statute provideth: And the reason thereof is, for that the Law-maker could not possibly lay down all cases in express terms. *Æquitas est convenientia rerum quæ cuncta coæquaparatur, & quæ in paribus rationibus paria jura & judicia desiderantur.* And again, *Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur & emendat, nulla scriptura comprehensa, sed solum in vera ratione consistens.* *Æquitas est quasi æqualitas.* Bonus judex secundum æquum & bonum judicat, & æquitatem stricto juri præfert. Et jus respicit æquitatem.

Bretton lib. 4. fo. 186.

(b) 18 A. S. p. 5. 18 E. 3. 46.
33 E. 3. tit. taille 5.
3 E. 3. 32. Pl. Com. Selg.
nour Barkley's case.
1 M. r. Dy. 46 V. Sect. 24.

C Sicome terres sont done a un homme & a les (b) heires males de son corps engendres, en tel cas son issue male inheritera, & l'issue female en unques inheritera, &c. This shall be explained afterward. Sect. 24.

Sect. 22, & 23.

CT hese two Sections or anything therein, do need no explanation, in respect they shall be also explained hereafter in the next Section, saving only these words (queux doient inheriter) are very observable, for they signify a diversity between a descent and a purchase. For when a man giveth lands to a man and the heirs females of his body, and dieth having issue a son and a daughter, the daughter shall inherit; for the will of the Donor (the Statute working with it) shall be observed. But in case (g) of a purchase it is otherwise: For if A. have issue a Son and a Daughter, and a Lease for life be made, the remainder to the heirs females of the body of A. A. dieth, the heir female can take nothing, because she is not heir; for she must be both heir and heir female, which she is not, because the brother is heir, and therefore the will of the giver cannot be observed, because there is no gift, and therefore the Statute cannot work thereupon. And so it is if a man hath a Son and a Daughter, and dyeth, and Lands be given to the Daughter, and the heirs females of the body of her Father, the daughter shall take

CI N le maner est, si freres ou tenemens sont dones a un hoë & a ses hëres females de son corps engendres, en tel cas son issue female pur inherita p force & form de le dit done, & nemy issue male, pur ceo que en tiels cas es de dones faits en le tafle, queux doivent inheriter, & qui nemy la volunt d' il do nos serà observe.

CE en le cas q terfs ou tenemens sont dones a un hoë, & a ses heires males d s corps issuant, & il ad issue deux fils, & devy, & lez fitz entra come

In the same manner it is, if Lands or Tenements be given to man, and to his heirs females of his body begotten; In this case his issue female shall inherit by force and form of the said gift, and not his issue male. For in such cases of gifts in tail, the will of the Donor ought to be observed, who ought to inherit, and who not.

A Nd in case where lands or tenements be given to a man, and to the heirs of his body, and he hath issue two sons, and dieth deux fils, & devy, & the eldest son enter as heir male, and he male, & ad issue file hath issue a daughter & devy, s. frot avera la and dieth; his brother shall have the land, an

[‡] Post. 164. a.

[‡] 1 Co. 103. a. 104. a.
(g) 9 H. 6. 24. 11 H. 6. 13.
14. 37 H. 8. Br. tit. Done.
42. Tit. nosme 2. & 40.
Dyer 23 El. 374. Shelleys
case lib. 1. fo.
[‡] Hob. 31.

[‡] Post. 26. b.

ceo que le frere est
heire male. Mes au-
tement serra en au-
ters tailes queux sont
pecifies en le dit Sta-
ute.

not the daughter, for
that the Brother is
heir male. But other-
wise it is in the other
entails, which are spe-
cified in the said Sta-
tute.

Littleton purposely added these words, Queux doient inheriter.

nothing but an estate for life,
because there is no such per-
son, she being not heir. But
where a gift is made to a
man, and to the heirs female
of his body, there the Donee
being the first taker, is capa-
ble by purchase, and the heit
female by descent, secundum
formam doni: and therefore
Littleton purposely added these words, Queux doient inheriter.

Sect. 24.

Auxy si terres
soient dons a
n hōe, & a les heires
males de son corps in-
endres, & il ad issue
le, quel ad issue fits &
evy, & puis apres le
donee devy, en cest case
fits de la file ne inhe-
teria passe per force
de le taile, pur ceo que
necunquē que serra
herit per force dun
one en le taile fait
s heires males, covi-
nt conveyer son dis-
ent tout per les heires
males. Mes en tel
ase le donoz poet en-
er pur ceo que le do-
ne est mort sans issue
male en la Ley, en-
tant que le issue del
e ne poet conveyer
luy mesme le discent
r heire male.

Also if lands be gi-
ven to a man and
to the heirs males of
his Body, and he hath
issue a daughter, who
hath issue a Son, and
dieth, and after the do-
nee die; In this case
the son of the daugh-
ter shall not inherit by
force of the entail, be-
cause whosoever shall
inherit by force of a
gift in tail made to
the heirs males, ought
to convey his descent
whole by the heirs
males. Also in this case
the donor may enter,
for that the donee is
dead without issue
male in the law, insomuch
as the issue of
the daughter cannot
convey to himself the
descent by an heir
male.

the Common Pleas, Vide Pl. Comment 414.b. And so it is (i) mutatis mutandis, when a gift is made to a man, and to the heirs females of his body, and he hath issue a son, who hath issue a daughter, this daughter shall never inherit, because she must convey by descent from females. And for the reason hereof see a notable case in 15 E. 2. tit. Corone 385. where it is argued (as before it had been) that the son of a female should have an appeal of the death of a Cousin; and yet the daughter her self should never have had it. But there it is agreed, that son of a female (k) in a Libertate probanda, should be no witness or proof against the issue of males. And the reason of this diversity is very observable: For by the Com. Law the female might

Quecunq; ser-
ra enheriter <sup>(b) 1 H.6.24. 11 H.6.13.
14. 28 H.6.tit.Devise 18.
Statham tit.Devise.P1.
Com.in Scholast.case.
414. b.</sup>
per force dun done en
Taile, &c. Vide Tr. (h)
28 H.6. Tit. Devise 18. (which
is not in the Book at large, tit.Done & Rom.61.tit.
but written verbatim out of
Statham) If a man devise
lands to a man, and to the
heirs males of his body, and ^{+ Post.377.a.}
hath issue a daughter, which
hath issue a son, this son shall
be inheritable, and notwithstanding
standing in a gift in tail the
law is otherwise, and that by
the opinion of all the Judges
in the Exchequer Chamber.
But I hold this case to be ill
reported, unless you will re-
fer the opinion of the Judges
to the gift in tail last
mentioned. For first, albeit
a Devise may create an In-^{+ 1 Roll. 841.839..}
heritance by other words
than a gift can, yet cannot a
Devise direct an inheritance
to descend against the rule of
Law. Secondly, there is no
intent of the Devisor ap-
pearing, that the son of the
daughter should, against the
rule of law, inherit, and the
Statute probideth, that vo-
luntas donatoris, &c. obser-
etur. And I have heard this
case often dented to be Law,
both in the Kings bench, and

(i) 11 H.6.13.

15 E.2.tit. Cor.386.]

+ Ante 6.b.

(k) Mirror c.2.sect.7.vid.

Glanvil 116.14 cap.3.

‡ 2 Inst. 68.

Vid. Seignior de la Wares
case, lib. 1. fol. 1.

17 E. 4. 1.

20 H. 6. 43.

‡ Post. 377.

(1) Stanford, 58. b.

25 E. 2. tit. coron. 384.

Hob. 31.

11 H. 6. 13.

9 H. 6. 25.

11 E. 3. Formedom 20.

‡ Ante. 20. b.

‡ 2 Co. 120.

(m) 15 H. 7. 10.
Li. 1. Dillon & Freins case
40 Aff. p. 13.
(n) 24 E. 3. 29.a.
‡ Dyer 330.
(o) 7 H. 4. 16. 16 E. 3. 72.
Littleton fol. 66.
15 Eliz. Dier 326.
‡ Post. 84.a.
(p) 44 E. 3. tit. tail 23.

might have had an appeal as heir to any of her Ancestors, as well as the male. But by the Statute of Magna Charta, cap. 34. Nullus capietur aut imprisonetur propter appellam scemine de morte alterius quam viri sui, which restraineth not the son of the female. And there Scrope saith, Per tous le Serjeants d'Anglterre, that is by all the Judges of the Couf in England, it was awarded, that the issue of the female should have an appeal for the death of his cousin. But in a libertate probanda, the issue of the blood female shall not be received to prove willenage in the issue of the blood male, for the Mother was disabled by the common Law, and the Mother might be a niece De eu & trene, that is of the Water and Whip of three cords (meaning such a bondwoman as is used to servile works and correction) and enfranchised by her husband. All which appeareth in the said book. And it is holden in 17 E. 4. 1. that if a man be slain which hath no heir of the part of his Father, that his uncle of the part of his Mother shall have the appeal, and yet he must of necessity make his conveyance by a woman. Vid. 20 H. 6. fo. 33. the question suddenly demanded and debated, and no consideration or mention had of the said former judgments and authoritie; there it is compared to a gift in tail to a man and to his heirs males of his body, that the heir male of the daughter shall not inherit which hath no affinity to it, and yet the authority of this book is great, for it is by the assent of all the Justices of the one bench and the other in the Exchequer Chamber, and therefore I leave the learned and judicious Reader to his own judgment. (1) Vide Stanford 58. b. 15 E. 2. 384. If a man give lands to a man and to the heirs males of his body begotten; remainder to him and to his heirs females on his body begotten, the Donee hath issue a son, who hath issue a daughter, who hath issue a son, this son is not inheritable to either of both these estates tail, because as Littleton saith, The male must make his conveyance only by males, and so must the female by females. But in this case the land shall revert to the Donor. In therefore the safest way when a man will intail his lands to the heirs males and females of his body, is to limit the first estate to him and the heirs males of his body, the remainder to him and to the heirs of his body, and then all his issues whatsoever are inheritable. But if A. hath issue a son and a daughter and dieth, and the son hath issue a daughter and dieth, and a lease for life is made, the remainder to the heirs females of the body of A. In this case the daughter of A. shall not take causa qua supra. But albeit the daughter of the son maketh her conveyance by a male she shall take an estate tail by purchase, for she is heir and a female, but if lands be devised to one for life, the remainder to the next heir male of B. in tail, and B. hath issue two daughters, and each of them hath issue a son, and the Father and daughters die, some say this remainder is void for the uncertainty, some say that the eldest shall take it because he is worthiest, and others say that both of them shall take for that they both make but one heir. If lands be given to a man and to the heirs males and females of his body, he hath an estate in general tail in him.

Sect. 25.

A Un home, & **a sa femme.** But what if tenements be given to a man, and to a woman being not his wife, and to the heirs males of their two bodies, they have also an estate tail, albeit they be not married at that time. And so it is if Lands be given to a

E **mesme** le **tenemens** sont done **à un hōe, & à sa femme,** & à les **heires** **males** **de leur deux corps en- gendres,** &c.

N the same manner it is where Lands are given to a man and his wife, and to the heirs males of their two bodies begotten, &c.

man which hath a wife, and to a woman which hath a husband, and the heirs of their two bodies they have presently an estate tail (m) for the possibility that they may marry. But lands be given to two husbands and their wives, and to the heirs of their bodies begotten (n) they shall take a joint estate for life and several inheritances viz. the one husband and his wife the one moiety and the other husband and wife the other moiety, and no cross remainder or other possibility shall be allowed by law, where it is once settled and take effect. But if lands be given to a man and two women and the heirs of their bodies begotten, (o) In this case they have a joint estate for life and every of them several inheritance, because they cannot have issue of their bodies, neither shall there be any construction of a possibility upon a possibility viz. that he shall marry the one first, and then the other. And the same law it is (p) when land is given to two men and one woman, and to the heirs of their bodies begotten.

Sect. 26, 27.

26, 27. These two Sections need no explanation at all.

C I tem si tenents soient dones a un home & a sa feme, & a les heires del corps del home engendres, en ceo cas le baron ad estate en le tasle general, & la feme forsque estate pur terme de vie.

C I tem si terres soient dones a le baron & la feme, & a les heires le baron, queux il engendra de corps sa feme, en ceo cas le baron ad estate en le tasle special, & la feme forsque pur terme de vie.

A lso if tenements be given to a man and to his wife, and to the heirs of the body of the man; In this case the Husband hath an estate in general tail, and the wife but an estate for term of life.

A lso if lands be given to the husband and wife, and to the heirs of the husband which he shall beget on the body of his wife; in this case the husband hath an estate in especial tail, and the wife but an estate for life.

Sect. 28.

Ec si le done soit fait al baron & la feme, & a les heires la feme de sa corps per le baron engendres, donc que la feme ad estate en especial tasle, & le baron forsque pur terme de vie: Mes si terres sont dones a le baron & a la feme, & a les heires que la baron engendra de corps la feme, en ceo cas ambeux ont estate en la tasle, pur ceo que cest parol (heires) nest limit a lun plus que a lautre.

A nd if the gift be made to the husband and to his wife, and to the heirs of the body of the wife by the husband begotten, there the wife hath an estate in special tail, and the husband but for term of life: but if lands be given to the husband and the wife, and to the heirs which the husband shall beget on the body of the wife, in this case both of them have an estate tail, because this word (heires) is not limited to the one more than to the other.

heires of his body, is as good

G 2

Heires. This word ^{19 H.6.75.a. Regist.239.} (Heirs) is nomen operativum, to which of the Donees it is limited, it createth ^{17 E.2. tit. Talle.23.} the estate tail, but if it incline ^{3 E.3.32. 4 E.3.43.} no more to the one than to the other, than both do take, as ^{5 E.2.32.b. & 34.a.} here Littleton putteth the case. ^{21 E.3.43. 12 H.4.1.} And therewith accordeth the case of (q) ^{3 E.3. Where it ap= (q) 3 E.3.32.21 E.3.43.} 5.1.3.29.L
pareth; Quod Robert' de S.de. 19 H.6.75. per Hody.
dit Johan. de Ripariis & Matildæ uxori ejus, & hæred' quos idem Johan. de corpore ipsius Matild. procrearet, &c. and this adjudged to be an estate in especial tail in them both, because the state is equally tailed to the heirs of the baron as to the heirs of the wife. If lands be given to the husband and the wife, and to the heirs of the body of the surbiton, the gift is good, and the surbiton shall have an estate in tail general, but the estate tail besleth not till there be a surbiton. And hereby it appeareth (r) that a gift made to a man and to the

Regist.239.

(r) 20 E.3. Reg.377.
2. fol. 83.
Sect.

Brise

Sect. 29.

CT his is evident by that which hath been said, and needeth no explanation. But it hath been said, (s) that if a man give land to another, and to his heirs of the body of such a woman lawfully begotten, that this is no estate tail for the uncertainty by whom the heirs shall be begotten, so that the brother of the Donee or other cousin may have issue by the woman which may be heir to the Donee, and estates in tail must be certain. Then soze our Author to make it platin in all his cases added to these words [his heirs] which he shall engender. But that opinion is since our Author wrote over-ruled, and that estate adjudged to be an estate tail, and begotten shall be necessarily intended begotten by the Donee.

20 H. 6.36.
(s) Lib. 1. fol. 140.b.
Chudleigh's case adjudged
† 7 Co. 41.

CI tem si terre soit done a un home & a ses heires que il engendra de corps sa femme, en ceo cas le baron ad estate en e- special tail, & la femme nad riens.

ALso if land be given to a man and to his heirs which he shall beget on the body of his wife, In this case the husband hath an estate in special tail, and the wife hath nothing.

be heir to the Donee, and estates in tail must be certain. Then soze our Author to make it platin in all his cases added to these words [his heirs] which he shall engender. But that opinion is since our Author wrote over-ruled, and that estate adjudged to be an estate tail, and begotten shall be necessarily intended begotten by the Donee.

Sect. 30.

Si home ad issue fits & devie,

Oc. John de Mandevile by his wife Roberge had issue Robert and Mawde, Michael de Morevill gave certain lands to Roberge and to the heirs of John Mandevile her late husband on her body begotten; and it was adjudged that Roberge had an estate but for life, and the fee tail vested in Robert (heirs of the body of his father being a good name of purchase) and that when he died without issue, Mawde the daughter was tenant in tail as heir of the body of her Father per formam doni and the Formedon

‡ F.N.B. 213. e. † 2 Cro.
24. Post. 220.a.

which she brought supposed. Quod post mortem praefatae Robergia & Roberti filii & hæredis ipsius Johannis Mandevile & hæred' ipsius Johannis de praefata Robergia per praefatum Johan' procreat' praefat' Matildæ filiæ prædict' Johannis de praefata Robergia per praefatum Johan' procreat' soni & hæredi prædicti Roberti descendere debet per formam donationis prædict'. And yet in truth the land did not descend unto her from Robert, but because she could have no other heir, it was adjudged to be good. In which case it is to be observed, that albeit Robert being heir took an estate tail by purchase, and the daughter was no heir of his body at the time of the gift, yet she recovered the land per formam doni, by the name of heir of the body of her father, which notwithstanding her brother was, and he was capable at the time of the gift; and therefore when the gift was made she took nothing, but in expectancy, when she became heir per formam doni. But where a man by Deed gave lands to Emme late wife of John Master, habendum & tenendum prædict' Emme & hæredibus Johannis Master de corpore ejusdem Emme procreat'. In that case the son and heir of John Master begotten on the body of Emme took no estate with Emme in the lands, because he was named after the habendum.

‡ 2 Roll. 67. 68. † Plow.
† 5 H. 4. 13.
† Ante 24. 25.

If a man hath issue two daughters, and dieth seised of two acres of land in fee simple, and the one Coparcener giveth her part to her sister, and to the heirs of the body of her father; in this case the Donee hath an estate tail in the moiety of the Donee's part, for the Donee is not the entire heir, but the Donee is heir with the Donee, and she cannot give to the heirs of her own body, and the Donee hath the other moiety of her sister's part for life. If a man hath issue a son and a daughter, and dieth, and land is given to the daughter and to the heirs females

CI tem si home ad issue fits, & de- vie, & terre est done al fits, & a les heires de corps son pier en- gendres, ceo est bone taile, & uncoure le pier fuit mort al temps de la done. Et mults auters estates en taile y sont per le equitie del dit estatute que icy ne sont specifies.

ALso if a man hath issue a son and dieth, and land is given to the son, and to the heirs of the body of his Father begotten, this is a good entail, and yet the father was dead at the time of the gift. And there be many other estates in the tail by the equity of the said Statute, which be not here specified.

if the body of the Father, he taketh but an Estate for life, because he is not heir female to take by purchase as before hath been said.

Et a les heires de corps le pier. These words [les heires] are observable, for they were [ses heires] it clearly altereth the case. And therefore if lands be given to the son and to his heirs of the body of his Father, the son cannot take as heir of the body of his Father, &c. because the Grant is to him and to his heirs, &c. and consequently he hath a fee simple. But if there be Grandfather, Father and Son, and the father dieth, and lands be given to the son, and to the heirs of the body of the Grandfather, this is a good estate tail in the son, ^{+ Ante 20.b. + Post. 22.c. 22} as Littleton did put his case of the Father but for an example.

Et mults autres estates en le taille y sont, &c. This needeth no explanation.

Sect. 31.

Mes si home done terres u tenements a un autre, a aver & tener luy & a ses heires males, ou a ses heires females, il a que tel une est fait ad fee simple, pur ceo que est my limit per le one de quel corps issue male ou female sera, & issint ne poit n aucun maner estre per lequitie del t estatute, & pur ceo ad fee simple.

anisest of what family they be by expressing the Armories and Arms belonging to that family, and the husband of them may impale them or quarter them with their own as the case will require. And for distinction and better explanation hereof: If the King by his Letters Patents giveth lands or tenements to a man, and to his heirs males, the Grant is hold, for at the King is deceived in his Grant, in as much as there can be no such inheritance of lands or tenements as the King intended to grant. But if the King for reward of service ^{18 H.8.11. Patents Br.} ^{104.} ^{+ 1 Co. 41. 46. + 7 Co.} ^{+ 32. Moor 424. + 3 Cro.} ^{478. + 3 Co. 19.20.21.} ^{+ 6 Co. 23.} ^{27 H.8.27.} ^{(t) Lib.8.fo. 1. The Prince's case.} ^{21 E.3.4. 22 E.3.3.} ^{24 E.3.53. 9 H.6.25.} ^{9 E.4.15. 1 Mary Dyer} ^{+ 7 Ca. 41.} ^{(u) Per literas patentes authoritate Parliamentum}

If a man by his last will devise lands or tenements to a man and to his heirs males, this construction of law is an Estate tail, the law supplying these words [of his body.] Vide the Prince's (t) case, where it appeareth that an Act of Parliament may limit an Inheritance of lands or tenements, otherwise than common law would do, and create a new Estate of Jure, and many Authorities in law there cited worthy of note and observation. Rot. Parl. 21 E.3.4. 22 E.3.3. no 1 E.4.nu.26. The (u) Dutchy of Lancaster is intailed to King Edward the fourth and his 24 E.3.53. 9 H.6.25. Kings of England. And King Henry the sixth did by his Letters Patents grant Johanni 9 E.4.15. 1 Mary Dyer Johannis Talbot quod ipse & haeredes sui Domini manerii de Kingston Lisle in comitatu Berk. ^{+ 7 Ca. 41.} ^{(u) Per literas patentes authoritate Parliamentum} nunc Domini & Barones de Lisle Nobiles & Proceres regni habeantur, teneantur, & reputentur, by this he had a fee simple qualified in the dignity. 2 H. 5. fol. 1. A Grant was made to a man, and to his heirs Tenants of the Manor of ale. A man seised of lands in Gavelkind, give or devise the same to a man and to his heirs, he cannot hereby alter the customary Inheritance, but as in the case our Au-

Terres ou Tene- ments.

This Rule extendeth but to lands or Tenements, and not to the Inheritance that Noblemen and Gentlemen have in their Armories or ^{+ 7 Co. 33. + Ante 18.6.} ^{+ Post. 68.b. 165.a.} Arms. For where the No- bleman or Gentleman hath a fee simple in his Armories or Arms, yet is the same de- scendible to the heirs males lineal or collateral. For al- though a Female be heir at the Common law, yet the shield, Armories and Arms descend unto them that are able to bear them (far exceeding the nature of Gavelkind, but with several differences.) And all the females of that family, in respect that they be of the same blood, may in a losenge or under a curtain

18 H.8.11. Patents Br. ^{104.} ^{+ 1 Co. 41. 46. + 7 Co.} ^{+ 32. Moor 424. + 3 Cro.} ^{478. + 3 Co. 19.20.21.} ^{+ 6 Co. 23.} ^{27 H.8.27.} ^{(t) Lib.8.fo. 1. The Prince's case.} ^{21 E.3.4. 22 E.3.3.} ^{24 E.3.53. 9 H.6.25.} ^{9 E.4.15. 1 Mary Dyer} ^{+ 7 Ca. 41.} ^{(u) Per literas patentes authoritate Parliamentum}

be of the same blood, may in a losenge or under a curtain

⁺ Dyer 119.b.
Mich. 26 & 27 Eliz. in
Com. Banc.
Leonard Lovelace case.

* Not so in the King's
case.

⁺ 1 Co. Alt. Woods case.
(x) 18 Ass. p. 5. 18 E. 3.

46.6.
9 H. 6. 23.25. lib. 8. fol. 1.
The Prince's case. An-
cient Tenures, fol. 3.

thor, Ut res magis valeat, the Law rejecteth (Males) so in this case the law rejecteth this de-
jective (eldest.) And so it is if Lands be given to a man, and to the eldest heirs females of his
body, yet all his daughters shall inherit as it hath been resolved.

Et issint ne poet este prise per lequitie del dit Statute, &c.
For it is a certain Rule in law, that in every Estate in tail within the said Statute, it must be
limited either by express words or by words equipollent of what body the heir inheritable shall
issue. And it was (x) adjudged in Parliament, that where lands were given to a man, and to
his heirs males, that this was a fee simple, and that as well the heirs females as heirs male
should inherit, for the Grant of a subject shall be taken most strongly against himself.

Et pur ceo il ad Fee simple. Littleton's reason being shortly collected is this.
Whosoever hath an estate of Inheritance, hath either a fee simple or a fee tail, but when
lands be given to a man and his heirs males, he hath no Estate tail, and therefore he hath
fee simple.

What Actions Tenant in tail may have and cannot have, Vide Sect. 595. What great al-
terations have been made since Littleton wrote concerning not only Leases to be made by Ten-
ant in tail, but bars also of the Estate tail it self by force of certain Acts of Parliament
made since Littleton's time, you shall read Sect. 56, and 708.

Chap. III. Sect. 32.

Tenant in tail apres possibilite d'issue extinct.

+ Dr. & Stud. 62.a.

Littleton having
spoken of estates
of Inheritance,
viz: fee simple and
fee tail, now he treateth of
Tenants of freehold tantum,
that is, for term of life, and
therin first of Tenant in
tail after possibility of issue
extinct, and he giveth unto
him the first place, because
this Tenant hath eight qua-
lities and privileges which
tenant in tail himself hath,
and which lessee for life
hath not. (a) As first he is
dispunishable for waste. Se-
condly, he shall not be com-
pelled to attorn. Thirdly, he
shall not have aid of him in
the reversion. Fourthly, upon
his alienation, no writ of
entry in consimili casu, lieth.
Fifthly, after his death no
writ of Intrusion doth lie.
Sixthly, he may joyn the
mire in a writ of Right, in a
special manner. Seventhly,
In a Praecept, brought by
him he shall not name him-
self tenant for life. Eighthly,
In a Praecept brought a-
gainst him he shall not be
named barey tenant for life.
And yet he hath four other

⁺ 4 Co. 63. ⁺ 1 Roll. 296.
⁺ Post. 316.a.
(a) Temp. E. 1. waft. 125.
39 E. 3. 16.
31 E. 3. ald. 35.42 E. 3. 22.
43 E. 3. 1. 45 E. 3. 22.
28 E. 3. 96.46 E. 3. 13. 27.
2 H. 4. 17. 21 H. 6. 56.
10 H. 6. 1. 26 H. 6. ald. 77.
3 E. 4. 11.
13 E. 2. Entre Conge 56.
Fitz. N.E. 203.
Lewes Bowles case, lib.
11. fol. 86.81.

⁺ 3 Cro. 671.

Tenant en fee
tail apres pos-
sibilitie d'issue
extinct est, lou tene-
ments sont dones a
un home & a la femme en
especial tail, si l'un de
eux devy sans issue, ce-
luy que surviesquiss est
Tenant en tail apres
possibilitie d'issue ex-
tincta. Et s'ils avoi-
ent issue, & l'un de
vie, comment que du-
rant la vie, l'issue ce-
luy que surviesquiss ne
serra dit tenant en
tail apres possibilitie
d'issue extinct, uncore
si l'issue devy sans is-
sue, issint que ne soit
aucun issue en vie que
poit enheriter per force
de le tail, donc
celuy que surviesquiss

Tenant in Fe-
Tail after pos-
sibility of is-
tinct is, where Te-
nements are given to
a man, and to his wife
in especial tail, if one
of them die without
issue, the Survivor is
Tenant in tail af-
ter possibility of issue ex-
tinct, and if they have
issue, and the one die
albeit that during the
life of the issue, the
survivor shall not be
said Tenant in tail af-
ter possibility of issue
extinct, yet if the issue
die without issue, so
there be not any issue
alive which may
inherit by force of the
tail, then the suc-
ceeding party of the De-
scendents

Of Tenant in tail

Sect. 33. 28

e les donees est tenent nees is tenant in tail, n le taille, apres possi- after possibility of issue ille issue extinct.

re of his Estate. Decondly, If an Estate in fee, or in fee tail in Reversion, or Remainder, he in the Reversion or remainder shall be received upon his deaute, as well as upon bare tenant for life. Fourthly, an exchange between a bare Tenant for life and him is good, for their estates in respect of their quantity are equal, so as the difference standeth in the quality, and not in the quantity of the Estate. And as an Estate tail was originally carved out of a case ubi supra, simple, so is the Estate of this Tenant out of an Estate in especial tail. And he is called Tenant in tail after possibility of issue extinct, because by no possibility he can have any issue heritable to the same Estate tail. But if a man giveth land to a man and his wife, and to the heirs of their two bodies, and they live till each of them be an hundred years old, and have issue, yet do they continue Tenant in tail, for that the law seeth no impossibility of having children. But when a man and his wife be Tenant in special tail, and the wife dieth without issue, there the law seeth an apparent impossibility, that any issue that the husband can have any other wife should inherit this estate. And let this Tenant keep his Estate for he hath no privileges in respect of the priority of his Estate, and of the Inheritance that was once him. (c) For in the case of Evans, Mich. 28 & 29 Eliz. it was adjudged that where tenant in tail after possibility of issue extinct granted over his estate to another, that his Grantee was compelled to attorn in a Quid juris clamat, as a bare tenant for life, and so be named in the writ, by the Assignment the priority of the Estate being altered, the privilege was gone, and this judgment was affirmed in a writ of Error, and herewith agreeeth 27 H. 6. tit. Aid. Statham E. 3. i. b.

qualities which are not as Post. 202. a. agreeable to an Estate in tail, & Roll. 850. but do a bare lessee for life, (b) 13 E. Entre Cong. 56. (b) First, if he maketh a feoffment in fee, this is a forfeite Post. 252. a.

ag. 55.

55 E. 3. 4. 9. E. 4. 17.

2 R. 2 recedit 147.

41 E. 3. 12. 20 P. 3. recedit

38 E. 3. 33 Lewes Bowles

Lewes Bowles

case ubi supra.

(c) Lib. 11 fol. 43 Lewes

Bowles case.

Post. 316. a.

27 H. 6. tit. aid. Statham.

29 E. 3. 1. b.

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

E. 3. 1. b.

Sect. 33.

I Tem si tenements sont dones a un me & a ses heires il engendra de corps la feme, en cest s la feme nad ryn les tenements, & baron est seisi me donee in special tail. Et en ceo cas, la feme devy sans que de son corps endres per son baron, donques le baron tenant en tail a possiblity diffue tina.

Also if Tenements be given to a man and to his heirs which he shall beget on the body of his wife; in this case the wife hath nothing in the Tenements, & the husband is seised as Donee in especial tail. And in this Case if the wife die without issue of her body begotten by her husband, then the husband is Tenant in Tail after possibility of issue extinct.

ued to an estate for life, yet they have a bare Estate for life, but if the wife die, and the husband die having no other issue, and then the son die without issue, the wife shall have the privileges belonging to a Tenant in tail after possibility of issue extinct, as it appeareth in Lewes Bowles case ubi supra, hinc ergo se dicit; that the state of this Tenant must be created by act of God, and not by limitation of the party, ex dispositione Legis, and not ex provisione minis. (d) If land be given to a man and to his wife, and to the heirs of their two bodies, and after they are divorced causa præcontractus or consanguinitatis, or affinitatis, their Estate of Inheritance is turned to a joint estate for life, and albeit they had once an Inheritance between them, yet for that the estate is altered by their own act, and not by the act of God, viz. by

7 Co. 42. & 4 Co. 29.

(d) 7 H. 4. 16. 3 E. 1.

Aff. 415. 12 Aff. 22

19 Aff. p. 2. 13 E. 3.

Aff. 93. in fine

79 Co. 149, 142.

the

¹ 2 Rolls 841. ² Hob.
³ 32.

the death of either party without issue, they are not Tenants in tail after possibility of issue extinct. Lands are given to the husband and wife, and to the heirs of the body of the husband the remainder to the husband and wife, and to the heirs of their two bodies begotten, the husband die without issue, the wife shall not be Tenant in tail after possibility, for the remainder in special tail was utterly void, for that it could never take effect, for so long as the husband should have issue, it should inherit by force of the general tail, and if the husband die without issue, then the special estate tail cannot take effect, in as much as the issue which should inherit the especial, must be begotten by the husband, and so the general which is larger and greater, hath frustrated the special which is lesser. And the wife in that case shall be punished for waste:

Sect. 34.

¹ Ante 26. 5.

If lands be given to a man with a woman in Frankmarriage, albeit the woman (which was the cause of the gift) diech without issue, yet the husband shall be tenant in tail apres possibilite, &c. for that he and his wife were Donees in especial tail, and so within the words of Littleton. The residue of this Section is evident.

Et nota que nul poit estre tenent en le taille apres possibilite d'issue extinct, fors qz un des donees, ou le donee en le special taille. Car le donee in general taille ne poit estre unqz dit tenant in taille apres possibility d'issue extinct, pur ceo qz tous temps durant sa vie, il poit per possibility aver issue que poit inheriter per force de mesme le tail. Et si sunt en mesme le main, issue que est heire a les donees en un especial taille, ne poit estre dit tenent in taille apres possibilite d'issue extinct, causa qua supra.

* Et nota, que tenant en taille apres possibilite d'issue extinct ne sera unqz puny de waste, pur lenheritance que fuit un foits en lui, 10 Hen. in him, 10 H.6.1. But 6.1. Mes cestuy en le he in the reversion reversion poit entrer may enter if he alien sil alten en fee, 45 E. in fee, 45 E.3.22.

AND note that none can be Tenant in tail after possibility of issue extinct, but one of the Donees, or Donee in especial tail. For the Donee in general tail cannot be said to be Tenant in tail after possibility of issue extinct, because always during his life, he may by possibility have issue which may inherit by force of the same entail. And so in the same manner the issue which is heir to the Donees in especial tail cannot be Tenant in tail after possibility of issue extinct, for the reason abovesaid.

And note, that Tenant in tail after possibility of issue extinct shall not be punished of waste, for the inheritance that once was in him, 10 H.6.1. But 6.1. Mes cestuy en le he in the reversion reversion poit entrer may enter if he alien sil alten en fee, 45 E. in fee, 45 E.3.22.

¹ Dr. & Stud. 61. 2.
² Rep. 80

* This and that which follow, is not in the first Edition (which I have.) And therefore (that I may speak it once for all) it was wrong to the Author to add anything, (especially in one context) to his work.

Chap. IV. Sect. 35.

Curtesie Dengleterre.

Tenant per le Curtesie Dengleterre est, lou home et feme seisié en fee simple, ou en fee general, ou fessié me heire de le taile special, & ad issue per sine la feme male female, oyes ou e, soit l'issue apres mort ou en vie, si la ne debie, le baron dendra la terre duant la vie, per la Dengleterre. Et apper tenant per le Curtesie Dengleterre. C eo que ceo est en nul autre line, forsque tantement en Engletere.

Et ascuns ont dist, il ne sera tenant le Curtesie, si non enfant quil ad p sa ne soit oye crie, car crie est pve q le en- t fuit nee vise; I-

Quære.

At the Coronation of King R.2. saith the Record. (h) Johannes Rex Castilie & Legionis Dux castriæ, coram dicto domino rege & consilio suo comparens clamavit ut comes Leicestriæ officiæ schaliciæ Angliæ, & ut dux Lancastriæ ad gerendum principalem gladium domini Regis vocat, ana die coronationis ejusdem regis, & ut comes Lincoln' ad scindendum & secandum coram ipso Rege sedente ad mensam dicto die coronationis, & quia fact' diligentie examinatione coram is de consilio regis de præmissis satis constabat eidem consilio, quod ad ipsum ducem tanquam rem per legem Angliæ post modum Blanchiæ quondam uxoris suæ pertinuit officia prædicta prout fuius clamabat exercere, consideratum fuit per ipsum regem & consilium suum prædictum, quod id dux officia prædicta per se & sufficietes deputatos suos faceret & exerceret, & feoda debita in

H

PRist feme sei-
tie. And first of
what seisin a man
shall be tenant by the curtesie.
(e) There is in Law a two-
fold seisin, viz. a seisin in deed,
and a seisin in law, whereof
more shall be said, Sect. 468. &c
(f) 1. Mat. Dyer. 55.
681. And here Littleton in-
tendeth a seisin in Deed if it
may be attained unto. (g) As
it a man dyeth seised of lands
in fee simple or fee tail gene-
ral, and these lands descend
to his daughter, and she ta-
keth a husband and hath is-
sue, and dyeth before any en-
try, the husband shall not be
tenant by the curtesie, and yet
in this case she had a seisin in
law, but if she or her husband
had during her life entred, he
should have been tenant by
the Curtesie. (h) A man set-
led of an Abbotsor or Bent
in fee hath issue a Daughter,
who is married, and hath is-
sue, and dyeth seised, the
wife before the rent became
due, or the Church became
void, dieth, she had but a se-
isin in law, and yet he shall be
tenant by the curtesie, because
he could by no industry attain
to any other seisin. Et im-
potentia excastra legem. But a
man shall not be tenant by the
curtesie of a bare right, tide,
use, or of a reversion or re-
mainder expectant upon any
estate of freehold, unless the
particular estate be determin-
ed or ended during the coher-
tute.

^{f 2 Cro. 417.}
^{f 1 Cro. 399. f Post 1522.}
(e) F.N.B. 194.
^{f Dr. & Stud. 50.b.}

^{(f) 1. Mat. Dyer. 55.}
^{f 2 Co. 96.}

^{f Post 42.}
(g) 1. B.3. 66. 3. 3 H.7 S.
^{f 6 Co. 63. 2.}
^{f 1 Co. 97. b. 8 Co. 34.}
^{f Ante 1. 5.b. f Perk. 171.}

<sup>(h) Processu factu cora-
tationis R.2. Anno
regni sui primo Reg.
clad. m. 45.</sup>

bac

hac parte obtineret. Qui quidem dux officium Seneschalciæ prædict' personaliter adimplevit, &c. Every man that claimed to hold by grand Serjanty to do any service to the King at his Coronation, exhibited his petition to the said Duke as Steward of England, who upon hearing the proofs either allowed or disallowed the same.

Rot. Patent. Ann. 20 H.6.

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

(1) Vid. 1 E.3.6.5. E.3.26.
Post. 3.a.

In Letters Patents made by King H.8. to Richard Earl of Salisbury you shall find this clause, Quod charissimus consanguineus noster Richardus nunc Comes Sarum qui Alicia filiam heredem Thomæ nuper comitis Sarum adhuc superstitem duxit in uxorem, & cum eadem Alicia prolem tempore mortis præd' Thom' habuit & habet superstitem de præsenti, eo quod prætextu idem Richardus nunc comes Sarum nomen, statum & honorem comitis Sarum, &c. habet, & pro temporis vita sua de jure prætextu præmissorum habere debet. The name of the issue whiche the said Richard Earl of Salisbury had by the said Alice was Richard, who married with Anne the sister and co-heiress of Henry Beauchmap Earl of Warwick who was Earl of Warwick to him and to his heirs, and Duke of Warwick to him and to the heirs males of his body. And Richard the son having no issue by his wife, King H.6. in 27. year of his reign granted to him that he should be Earl of Warwick, Licet ipse & prædicta Anna exitum inter eos ad præsens non habent. These are many more I have read concerning this matter, and only say to the Reader, Ut erit tu opus dicio, nihil enim impedio.

(i) If an estate of freehold in Heignories, Rents, Commons, or such like, be suspended, a man shall not be tenant by the curtesie, but if the suspension be but for years, he shall be tenant by the curtesie. If a tenant make a lease for life of the tenancy to the Heignories, who taketh a husband, and hath issue, the wife dieth, he shall not be tenant by the curtesie, but if the lease had been made but for years he shall be tenant by the curtesie.

C En Fee simple ou en Fee taile general, ou seisin come heire de la tainte special, & ad issue per la feme male ou female. Secondly, of what estate If lands be given to a woman and to the heirs male of her body, she taketh a husband and hath issue a daughter and dieth, he shall not be tenant by the curtesie, because the daughter by no possibility could inherit the mothers estate in the land, and therefore where Littleton, issue by his wife male or female, it is to be understood, which by possibility may inherit as heir to her mother of such estate. Littleton himself explaineth this by express words Cap. Dower fo. 10. Sect. 3. And therefore if a Woman tenant in tail general maketh a Frestment in Fee, and taketh but an estate in Fee; and take a husband and hath issue, and the wife dieth, the issue may in a fit of madon recover the land against his father, because he is to recover by force of the estate tail heir to his mother and is not inheritable to his father.

C Et ad issue. 3. The time of having the issue. 4. What kind of issue. If a man in fee simple of lands in Fee hath issue a daughter, who taketh a husband and hath issue, the father dieth, the husband enter, he (a) shall be tenant by the curtesie, albeit the issue was had before the wife was seised. And so it is albeit the issue had dyed in the lifetime of her father before any descent of the land, yet shall he be tenant by the curtesie. If a Woman (b) seised of lands in fee simple taketh a husband, and by him is big with child, and in her travail dieth, and the child is delivered out of her body alive, yet shall he not be tenant by the curtesie, because the child was not born during the marriage nor in the life of the wife, but in the mean time her lands ceded, and in pleading he must alledge, That he had issue during the marriage.

(a) Old tenures 21 H.3. sed of lands in Fee hath issue a daughter, who taketh a husband and hath issue, the father dieth, the husband enter, he (a) shall be tenant by the curtesie, albeit the issue was had before the wife was seised. And so it is albeit the issue had dyed in the lifetime of her father before any descent of the land, yet shall he be tenant by the curtesie. If a Woman (b) seised of lands in fee simple taketh a husband, and by him is big with child, and in her travail dieth, and the child is delivered out of her body alive, yet shall he not be tenant by the curtesie, because the child was not born during the marriage nor in the life of the wife, but in the mean time her lands ceded, and in pleading he must alledge, That he had issue during the marriage.

(c) Britton ca. 66. & ca. 83. Pleta lib. 1. ca. 5. & lib. 6. no issue in the Law, but although the issue hath some deformity in any part of his body, yet if he hath humane shape this sufficeth. Hi qui contra formam humani generis conveniunt, procreantur (ut si mulier monstrosum vel prodigiosum fuerit exixa) inter liberos non contumescunt, partus tamen cui natura aliquantulum ampliaverit vel diminuerit non tamen superabundantur, ut si sex digitos vel nisi quatuor habuerit, bene debet inter liberos commemorari. Si inutilia natura reddidit membra, ut si curvus fuerit aut gibbosus vel membra tortuosa habuerit non tamen est partus monstrosus. Item puerorum alii sunt masculi, alii foeminae, alii Hermaphroditi; hermaphradita tam masculo quam foeminæ comparatur secundum prævalentiam sexus calescentis.

If the issue be born deaf or dumb or both, or be born an Idiot, yet is it a lawful issue to make the husband tenant by the curtesie and to inherit the Land.

C Oyes ou vive. If it be born alive (d) it is sufficient, though it be not heard to cry; for peradventure it may be born dumb. And this is resolved clearly in Paines case supra. For the pleading (as hath been said) is, That during the marriage he had issue by his wife, and upon that point the tryal is to be had, and upon the evidence it must be proved, that the issue was alive, for mortuus exitus non est exitus, so as the crying is to be proved that the child was born alive, and so is motion, stirring, and the like. And it is said by ancient Author (e) that it was ordained in the reign of King H.1. Que tous que surviennent

(q) 18 H.8. 25 Dyer. Paines case ubi supra.

(e) Mirror cap. 1. Sect. 3. Proofer that the child was born alive, and so is motion, stirring, and the like. And it is said by ancient Author (e) that it was ordained in the reign of King H.1. Que tous que surviennent

nt lour fomes dount ills ussent conceive tenuissent les heritages lour fomes pur lour vies.
By the custom of Gavelkind (f) a man may be Tenant by the curtesie without habing of
ny issue.

C Soit l'issue apres mort ou en vie. And therefore (g) if a woman Tenant in
all general taketh a husband and hath issue, which issue dyeth and the wife dyeth without any
cause he was intitled to be tenant Per legem Angliae before the estate in tail was spent, and soz
bat the land remaineth. But if a woman maketh a gift in tail and reserves a rent, to her and
her heirs, and the donee taketh husband and hath issue, and the donee dyeth without issue,
the wife dyeth, the husband shall not be tenant by the curtesie of the rent, soz that the rent new-
ly reserved is by the act of God determined and no state thereof remaineth. But (h) if a man
setteth in fee of a Rent and maketh a gift in tail general to a woman, she taketh husband and
ath issue, the issue dyeth, the wife dyeth without issue, he shall be tenant by the curtesie, of
he Rent, because the Rent remaineth. The diversity apparet.

(f) 9 E. 3. 38. 16 E. 3.
aid 129. Stat. de confuc-
tudinibus Kencia.

(g) 21 H. 3. tit. Dower
198 Palm's case, ubi supr.

‡ 1 Leon. 167.

‡ Post. 32. a.
(h) Brooke. tit. per le
Curtesie 86.
10 E. 3. 27.
‡ Post. 39.

C Si la feme devie, le baron tiendra la terre, &c. Four things do belong
an estate of Tenancy by the curtesie, viz Marriage; Death of the wife; Issue, and death of
the wife. But it is not requisite, that these shoulde concur together all at one time: and therefore
a man taketh a woman settid of lands in fee and is disseised, and then have issue, and the
wife dye, he shall enter and hold by the curtesie. So if he hath issue which dyeth before the
ascend, as is aforesaid.

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

First, after issue had, he shall do homage alone, and is become tenant to the Lord, and the a-
swere shall be made only upon the husband in the life of the wife, sa. shall be laid hereafter
when we come to the apt place. Secondly, if after issue (i) the husband maketh a Feoffment in
the, andt he wife dyeth, the feoffee shall hold it during the life of the husband, and the heir of
the wife shall not during his life recover it in Sur cui in vita; for it could not be a forfeiture, for
bat the estate, at the time of the Feoffment, was an estate of tenancy by the curtesie intitiate,
and not consummated. And it is adjudged in 29 E. 3. that the tenant by the curtesie cannot
aim by a Devise, and waite the state of his tenancy by curtesie, because saith the book the
eehold commenced in him before the devise for term of his life.

‡ 6 Co. 57. b 67. a. 124. B.
(i) 34 E. 2. Cui in vita 18.
2 E. 2. Cui in vita 26.
10 E. 3. 12.
Dier 21 Eliz. 363.

29 E. 8. fo. 27.

C Et est appellant per le curtesie dengleterre, pur ceo que nest use en
uter realme forsque tant solement en Engleterre.

C Per le Curtesie. In latine Per legem Angliae.

C Tant solement en Engleterre. It is also used within the Realm of Scotland and
bere it is called Curialitas Scottiae. And so it is in the Realm of Ireland.

C Et ascuns oint dit, que il ne serra tenant per le curtesie, si non que
enfant que il ad per sa feme soit oye crie, car per le crie est prove que
enfant fuit née wife. Our Author having delivered his own opinion before, viz. ‡ 8 Rep. 34.
yes ou wife, now he sheweth the opinion of others: for so it is said in the (k) Statute De tenen-
bus per legem Angliae: and of that opinion is Glanvil (l) lib. 7 cap. 8. Bracton lib. 5. tract. 5. cap. 30.
Britton ca. 50. fol. 132. Fleta lib. 6. ca. 50. &c. But the reason is against their opinion. For by (k) Vetus mag. ear. part 2.
fol. 70. (l) Glanvil lib. 7. cap. 8.
Bracton lib. 5. tract. 5. ca. 30.
Britton cap. 50. fo. 132.
Fleta lib. 6. cap. 54.
(m) Sect. 40. 119. 132. 136
137. 138. 141. 145. 148.
156. 170. 179. 192. 202.
227. 234. 269. 336. 339.
357. 400. 435. 436. 440.
443. 460. 462. 478. 501.
503. 506. 522. 423. 524.
534. 576. 601. 633. 634.
640. 642. 643. 644. 646.
658. 675. 689. 721. 723.
726. 730. 731. 733. 734.
‡ 2 Roll. 2. contra.
‡ Apres. fo. 183. contra.
183. b.
7 E. 3. 6.
(n) 17 E. 3. 51.

C Ascuns ont dit. But these and the like speeches our Author intendeth that the point
d been controverted, but thereby, except it be in this section where formerly he delivered his
opinion as hath been said, he tacitly insinuateth his own judgment whch in all the rest holdeth
good law and warranted by good Authority throughout his three books, whch kind of
speech & the like I habe collected together, as it appeareth by the sections in (m) the marginent.

C Ideo quare. This Quare is not in the original edition of Littleton, and therefore
be rejected.

And some have said that in divers cases a man shall by habing of issue be tenant by the cur-
tesie where a woman shall not be endowed. And therefore they say if lands be given to two wo-
men & to the heirs of their two bodies begotten, & one of them take husband and have issue and
the, the inheritances being several the husband shall be tenant by the curtesie, as it is adjudg-
ed E. 3. and in other books (m) this judgment is cited and allowed. But certain it is, That
land be given to two men and to the heirs of their two bodies begotten, and the one taketh
the and dyeth, she shall not be endowed, for no estate in the land is altered by that mar-
riage. But I leave the Reader to his own opinon, or rather to suspend it until he come
to

Prerog. regis ca. 13.

33 E.3. tit Travers 36.
4 Co. 55.

† 1 Leon. 47.

(n) Pl. Com. Dame Hales
Cap. 263.

† 4 Co. 55. † 9 Co. 129.

† 4 Leon. 6. 4 Post. 166.

† Plow. 196. † Mo. 163.

(o) Magna Carta 30 E.1.
Dower 81. b.

17 H.3. Dower.

Bract. lib. 2. fo. 46. & 314.

Post. 32. 2. a. & Cro. Ca.

300. † 1 Roll 675.

(o) 4 H.3. dower 180.

Bract. fol. 93.

Fleta lib. 5. cap. 23.

2 E. 2. dower. 123.

3 E. 3. dower B. 102.

9 H. 7. 1. 30 E. 3.

† Hob. 338b. † 9 Co. 111.

† Post. 278. b.

to the proper place in the next chapter. If lands holden of the King by Knights service in capite descend to a woman, and after office found she intrude and taketh husband and hath issue, in this case the husband shall be tenant by the curtesie; and yet if the heir male after office in the like case intrude & taketh wife, his wife shall not be endowed, for so it is provided by the Statute of Prerogativa regis cap. 13. that in that case there accrue to the heir no freehold, nor dower to the wife, which by interpretation is as much as to say, that the heir shall have no freehold as to this respect to give any dower to his wife. If a man marry the niece of the King by licence and hath issue by her, and after lands descend to the niece and the husband entered the niece dyeth, he shall be tenant by the curtesie of this land, and the King upon any office found shall not evict it from him, because by the marriage, the niece was intranchised during the coverture. But if a free woman marry the Villain of the King by licence, and Lands descend to the villain, the villain dyeth, the wife shall not be endowed, but upon an office found the King shall have the land, for a Villain remained still a Villain to the King. A woman (p) taketh husband, and hath issue, lands descend to the wife, the husband enters, and after the wife is found an Ideot by office, the lands shall be seized by the King, for the title of the mancy by the curtesie, and of the King begin at one instant, and the title of the King shall be preferred. A man shall be tenant by the curtesie of a Castle (o) which serveth for the public defence of the Realm, but a woman shall not be endowed thereof, as shall be said more at large hereafter.

A man shall be tenant by the curtesie of a common sans nomber, but a woman shall not be endowed thereof, because it cannot be divided. A man shall be tenant by the curtesie (p) of a house that is Caput Baronie, or Comitatus: But it appeareth by 4 H.3. Dower 180. that a woman shall not be endowed of it. For the Law respecteth Honour and Order. A man is intituled to be tenant by the curtesie, and maketh a Feoffment in Fee upon condition, and entreteth the condition broken, and then his wife dyeth, he shall not be tenant by the curtesie, because albeit the estate given by the Feoffment be conditional, yet his title to be tenant by the curtesie was inclusively absolutely extinct by the Feoffment, for the condition was not annexed to it. As if the Lord disseise the tenant, and maketh a Feoffment in Fee of land upon condition, and entreteth for the condition broken, yet the Seigniory is extinct, for that was inclusively extine by the Feoffment, See more of Tenant by Curtesie, Section 52.

Chap. V. Sect. 36.

Dower.

† Dyer 185.

Tenant en Dower.

Tenens in dote. Dos, Dower in the Common Law (q) is taken for that portion of Lands, or Tenements which the wife hath for term of her Life of the Lands or Tenements of her Husband after his decease for the sustenance of her self, and the Nurture and Education of her Children. Propter onus matrimonij & sustentationem uxoris & educationem liberorum cum fuerint procreati si vir præmoriat: & hoc proprie dicitur Dos mulieris secundum consuetudinem Anglicanam. And Dos is derived ex donatione, & est

Tenant en Dower est lou home est seisié de certain terres ou tenements en fee simple, taille general, ou come heire de le taille special, & prent femme, & devie, la femme apres le decesse de sa baron sera endow de la tierce part de tiels terres & tenements que fue. were her husbands ront a la Baron any time during the en aucun temps du verture, To have at

† 8 Co. 150.
† F.N.B. 141.e.(q) Lib. Rub. cap. 70.
Glanvil lib. 6. cap. 1.
Bract. lib. 2. 10. 92.
Brit. cap. 101.
Fleta lib. 5. cap. 22.

ant le covverture, a a- to hold to the same
er & tener a mesme wife in severalty by
a feme en severaltie metes and bounds for
er mesmes & bounds term of her life whe-
ur term de sa vie, le ther she hath issue by
uel el avoit issue per her husband or no, and
a baron ou nemy, & of what age soever the
e quel age que la wife be, so as she be
e soit, issint que el past the age of nine
asse lage de neuf ans years at the time of
l temps de le mort the death of her hus-
a baron, cat il coviēt band, for she must be
ue el soit passe lage above nine years old,
e neuf ans al temps at the time of the de-
el mort la baron, ou cease of her husband,
utrement el ne sera otherwise she shall not
ny endow. be endowed.

quasi donarium, because either
the Law it self doth (without
any gift) or the husband him-
self gibeth it to her, as shall be
said hereafter. And at this day
Dowry or Dower is not taken by
the professors of the Common
law, either for the land which
the wife bringeth with her in
marriage to her husband, for
then it is either called in
~~Frankmarriage~~ or in marri-
age, as hath been said, nor for
the portion of mony or other
goods or chattels, which she
bringeth with her in marriage,
for that is called her marriage
portion. And yet of ancient
time (r) Britton cap. 101.
(r) Dos mulieris, the Do- Braeton lib. 2. fo. 92.
wer or Dotory of the Woman Glanvil lib. 6. ca. 1. lib. 7.
was also applyed to them. ca. 1. lib. 2. fol. 93. Bing-
ham case, 4 H. 3. dower
179.

In Domesday, Dowry is called Maritagium.
To the consummation of this Dower thre things are necessary, viz. marriage, seisin, and
the death of her husband.

Dowry (s) the very name doth import a freedom, for the law doth give her therewith many
privileges: Secundum consuetudinem regni mulieres viduae, &c. debent esse quietae de tallagiis, &c. (s) Claus. 11 H. 2. nu. 17.
And tenant in dower shall not be distreined for the debt due to the King by the husband in Regist. 142, 143.
in his life time in the lands which he held in Dower. And other privileges she hath; of which Ockham fol. 40.
Ockham yeilds the reason, Domini ejus parcatur quia primum pudoris est.

Lou home. If the husband be an alien (t) the wife shall not be indowered. So if the (t) Braet. fo. 298. 19 E. 2.
husband be the Kings Villain, the wife shall not be indowered, (as hath been said) but if the dower 171. Dame Hales
husband be a Villain to a common person, the wife shall be indowered if she be intrusted to dower
before the entry of the Lord. And so if a Freeman take a Serv to wife and dieth she shall be en- Statham. 13 E. 1. tit.
dowered. The Wife of an Ideot, non compos mentis, outlawed, or attainted of felony or trespass,
attainted of heresie, prevarication, or the like, shall be indowered. But if the husband be attainted of
treason, albeit it be treason done after the title of dower she shall not be indowered, as shall be
aid hereafter.

Seise. Here this word (seised) extendeth it self as well to a seisin in Law, or a civil
seisin, as to a seisin in deed, which is a natural seisin: but seised he must be either the one way
or the other during the covverture. For a woman shall be indowered of a seisin in law. As where
Lands or Tenements descend to the husband, before entry, he hath but a seisin in law, and
yet the wife shall be indowered, albeit it be not reduced to an actual possession, for it lyeth not
in the power of the wife to bring it to be an actual seisin, as the husband may do of his
wives Land, when he is to be tenant by curtesy, which is worthy the observation. And yet of
very seisin in law, or actual seisin of lands or tenements, a widow shall not be indowered. + ante 29.a.
For example, If there be grandfather, father, and son, and the grandfather is seised of three (u) 43 E. 3. 32. 45 E. 3. 13.
acres of Land in Fee, and taketh wife and dyeth, this land descendeth to the father, who 9 E. 3. 4. F.N.B. 149.
dyeth either before or after entry, now is the wife of the father dowerable. The father dyeth 8 E. 3. tit. A. 392
and the wife of the grandfather is indowered of one acre and dyeth, the wife of the father shall 19 E. 2. dower 170.
be indowered only of the two acres residue, for the dower of the grandmother is paramount the 23 E. 3. dower 30.
Title of the wife of the Father, and the seisin of the Father which descended to him (be it in contra + 4 Co. 122.
law or actual) is defeated, and now upon the matter the father had but a reversion expectant F.N.B. 149. 1 Rol. 67.
upon a freehold, and in that case, Dos de dote petition debet; although the wife of the grand- (w) 5 E. 3. tit. Voucher
father dyeth living the Fathers wife. And here note a diversity (w) between a descent and 249. Paris case.
a purchase. For in the case aforesaid, if the Grandfather had infeoffed the Father, or made
a gift in tail unto him, there in the case aforesaid, the wife of the Father, after the decease
of the Grandfathers wife should have been indowered of that part assigned to the Grand- 9 E. 3. 4.
mother

[†] 4 Co. 122.

(x) 8 E. 3. tit. Ass. 393.
13 R. 2. Dower 55.
22 E. 3. 5. 8 E. 3. 3.

7 H. 6. 4.

† Post. 42. a.

† 4 Co. 122. 9. contra.

(y) 6 E. 3. 50. F. N. B. 149.

† Cro. Cap. 190. 191.

† 1 Roll. 676. † 8 Co.

43. † 1 Roll. 474.

(z) 27 H. 8. 23. F. N. B.

17 H. 3. Dower 192.

† Mo. 57. † 2 Cro. 615.

† Doc. Pla. 148. 2 Co. 77.

mother, and the reason of this diversity is, for that the seisin that descended after the decease of the grandfather to the father is avoided by the endowment of the grandmother whose title was consummate by the death of the grandfather. But in the case of the purchase or gift that took effect in the life of the grandfather (before the title of dower of the grandmother was consummated) is not defeated but only quoad the grandmother, and in that case there shall be Dower done. And yet there is another diversity (x) where the wife of the father is first endowed, and where the wife of the grandfather, for in the same case after the decease of the grandfather and father the son entreath and endoweth his mother of a third part, against whom the grandmother recovereth a third part and dieth, the mother shall enter against into the land recovered by the grandmother, because she had in it an estate for term of her life, and the Estate for the life of the grandmother is lesser in the eye of the law, as to her than her own life. Also the husband (y) may be seised in his Demesne, as of fee absolutely, yet the woman shall not be endowed, as she shall not be endowed both of the land given in exchange, and of the land taken in exchange, and yet the husband was seised of both, but she may have her election to be endowed of which she will.

Also of a seisin for an instant a woman shall not be endowed, as if Cestui que use (z) after Statute of 1 R. 3. and before the Statute of 27 H. 8. had made a feoffment in fee, his wife should not be endowed.

Likewise if two joint tenants be in fee, and the one maketh a feoffment in fee, his wife shall not be endowed. And so if the Conusee of a fine doth grant and render the land to the Conulor, the wife of the Conusee shall not be endowed, for it is not possible that the husband could have endowed his wife of such an estate as the usual pleading is, Lib. intrat' 225 Quia dicit quod W. quondam vir suus nunquam fuit seisitus de tenementis praedictis de tali statu ita quod eandem A. inde dorasse potuit.

Vide Sect. 242.

† Post. 165. a. Ante. 30. b.

† 2 Cro. 18.

(a) Pasch. 13 Eliz. Com. Banco. Bract. fol. 96.
Brit. ca. 103. Flct. 1. 5. c. 23.
30 E. 1. tit. Dower 81. b.
30 E. 1. Vouch. 298.
17 H. 3. 192. 8 H. 3. Dow-
er 196. 8 H. 3. lib. 194.

(b) Pat. 1 E. 1. par. 1. m. 17.
Esch. 4. E. 1. nu 88.

(c) Bract. 1. 2. f. 93. Brit. c.
103. Flct. lib. 5. ca. 22.
Trin. 17 El in Com. Ban.

¶ Des terres ou tenements. Of a Castle that is maintained for the necessary defence of the Realm a woman shall not be endowed, because it ought not to be divided, and the publick shall be preferred before the private. But of a castle that is only maintained for the private use and habitation of the owner, a woman shall be endowed. And so it was adjudged in the Court of (a) Common Pleas, where in a writ of Dower the demand was, De tertio parte Castrorum de Hildetker in Comitatu Northumb. And the Statute of Magna Charta cap. 7. hinc by it is provided, nisi domus illa sit Castrum, is to be understood, a castle maintained for the necessary and publick defence of the Realm. And this agreeth with ancient Records, (b) (albeit in the argument of the said case they were not bouched) the effect whereof be, Non debent milie- ribus assignari in dorem castra que fuerunt virorum suorum, & quae de guerra existunt, vel etiam ho- magia & servicia aliquorum de guerra existentia. Wherein it is to be observed, That the Law is not satisfied with the names of things, or nominatives, but with things real and substan- tial. But of the principal Mansion, or capital Messuage, the wife shall be endowed, (c) si ne- sit caput Comitatus, sive Baronie, for the honour of the Realm, or (as hath been said) a castle in the publick defence of the Realm. And so are the old books to be intended, as it was resolved Tr. 17 Eliz. in the Court of Common Pleas, which I heard and observed. And of an es- tail in lands determined, a woman shall be endowed in the like manner and form as a man shall be Tenant by the curtesy mutatis mutandis.

¶ En fee simple, fee tail general, &c. If a man be Tenant in Fee tail gene- ral, (d) and make a Feoffment in Fee, and taketh back an Estate to him and to his wife, and to the heirs of their two bodies, and they have issue, and the wife dyeth, the husband taketh another wife, and dyeth, the wife shall not be endowed, for during the coverture, he was seized of an Estate tail special, and yet the issue which the second wife may have, by possibility may inherit.

The same law it is, if in this case he had taken back an estate in fee simple, and after had his wife and had issue by her; yet she shall not be endowed, for that the fee simple is extinguished by the remitter, and her issue hath the land by force of the entail. But in that case the tenant can not plead, that the husband was never seized of such an estate whereof the demandant might be endowed, but he must plead the special matter.

¶ Et prent femme. If a man be so seized as is aforesaid, taketh an alien to wife, and dyeth, she shall not be endowed: but if the King take an alien born, and dyeth, she shall be endowed by the Law of the Crown. And Edmond the brother of King Edward the first, married the Queen of Navarre, and died, and it was resolved (e) by all the Judges, that she should be endowed of the third part of all the lands whereof her husband was seized in fee.

If a Jew born in England taketh to wife a Jew born also in England; the husband is converted to the Christian faith, purchaseth lands, and infeoffeth another, and dyeth, the wife

† Doc. Pla. 148.
10 H. 8. Dier 41.
† Post. 33. a.

(e) Rot. Parl. 26 E. 1.
Rot. 1.

sought a wort of Dower, and was barred of her dower, and the reason yielded in the record (f) (f) Dorf. claus. 18 H.E.
this, Quia vero contra justitiam est, quod ipsa dotem petat vel habeat de Tenemento quod fuit m. 17.
tri sui ex quo in conversione sua noluit cum eo adhaerere & cum eo converti.

¶ Del tierce part de tiels Terres & Tenements per severaltie per metes

bonds. Albeit of many inheritances that be entire, whereof no division can be made
by metes and bounds, a woman cannot be endowed of the thing it self, yet a woman (g) shall
be endowed thereof in a special and certain manner. As of a Mill a woman shall not be en-
dowed by metes and bounds, nor in common with the heir, but either she may be endowed of the
said coll-dish, or de integro molendino per quemlibet 3.mensem. And so of a Millen, (h) ei-
ther the third days work, or every third week or month. A Woman shall be endowed of the
third part of the profit of stallage, of the third part of the profits of a Fair, of the third part of
the profits of the office of the Marshall, of the (i) third part of the profits of the keeping of a
Duck. Of the third part of the profit of a Dove-house; and likewise of the third part of a Pil-
lyry, (k) viz. tertium piscem, vel jactum retis tertium. Of the third presentation to an Abbowson.
writ of Dower lyeth de 3 parte exituum provenientium de custodia gaolæ Abathæ Westminst'.
and therewith agreeeth reverend antiquity. De (l) nullo quod est sua natura indivisibile, & secati-
vum in five division non patitur nullam partem habet it, sed tatis acia ei ad valentiam. Of the thrid
part of profits of Courts, (m) fines, heriots, &c. Also a woman shall be endowed of Tithes.
and the surest endowment of Tithes, is of the third Sheaf, for what land shall be sown is
ascertain.

But in some cases of lands and tenements which are divisible, and which the heir of the
husband shall inherit, yet the husband shall not be endowed. As if the husband (n) maketh a
lease for life of certain lands, reserving a rent to him and his heirs, and he taketh a wife and
dyeth, the wife shall not be endowed, either of the reversion (albeit it is within these words
Tenements) because there was no seisin in deed or in law, of the freehold nor of the rent, because
the husband had but a particular state therein, and no fee simple. But if the husband maketh a
lease for years, reserving a rent, and taketh wife, the husband lyeth, the wife shall be endowed
the third part of the reversion by metes and bounds, together with the third part of the rent,
and execution shall not cease during the years. And herewith agreeeth the common experience at
his day. But if the husband maketh a gift in tail, reserving a rent to him and to his heirs
and after the donor taketh wife and dyeth, the wife shall be endowed of this rent, because it
a rent in fee, and by possibility may continue for ever.

Of a Common certain a woman shall be endowed, but of a Common sans nomber en grosse
she shall not be endowed, as hath been said before. And so of a rent service, rent charge, and
rent seck, she shall not be endowed: but of an annuity that chargeth only the person, and issueth
out of any lands or tenements, she shall not be endowed: But if the freehold of the rents,
common, &c. were suspended before the coverture, and so continue during the coverture, she shall
not be endowed of them. If after the coverture the husband doth extinguish them by release or
her wife, yet she shall be endowed of them; for as to her Dower they in the eye of the law
be continuance.

If the wife be intituled to have dower of three acres of Marsh, every one of the value of
xvi pence, the heir by his industry and charge maketh it good Meadow, every acre of the va-
ue of ten shillings, the wife shall have her dower according to the improved value, and not ac-
cording to the value as it was in her husbands time: for her title is the quantity of the land,
one just third part.

And the like law it is, if the heir improve the value of the land by building: and on the o-
ther sides, if the value be impaire in the time of the heir, she shall be endowed according to the
value at the time of the assignment, and not according to the value as it was in the time of
the husband.

¶ A scuns temps durant le coverture. For the better understanding whereof V. 30 E 1. Vouch. 298.
is to be known, that (as hath been said) to dower three things do belong, viz. marriage,
seisin, and the death of the husband. Concerning the seisin, it is not necessary that the same
should continue during the coverture, for albeit the husband alieneth the lands or tenements,
extinguisheth the rents or commons, &c. yet the woman shall be endowed. But it is necessary
at the marriage do continue, for if that be dissolved the dower ceaseth, ubi nullum matrimonii
ibi nulla dos. But this is to be understood when the husband and wife is divorced a vin-
do matrimonii, as in case of precontract, consanguinity, affinity, &c. and not a mensa & thoro on-
ly, as for adulterp. And yet it is said, that if the assignment of dower ad ostium ecclesie be spe-
cified, viz. That notwithstanding any divorce shall happen, yet that she shall hold it for her
life that this is good.

If the wife elope (o) from her husband, that is, if the wife leave her husband, and goeth
away and carrieth with her adulterer, she shall lose her dower until her husband willingly
with-

^{¶ 1 Roll. 622.}
^{(g) Bra. 1.1.2. f. 97.b.}
^{23 H.3. lit. A. 1.3.5 F.N.B.}
^{149.44 E.3. Dower 50.}
^{+ Post. 165 a.}
^{(h) 2 H.6.11 Erast lib. 2.}
^{fo. 97 Brit 247.11 E.3.}
^{lit. Dover 85. 15 E.3.}
^{ibid. 81. 2 E.3.57.}
^{F.N.B. 6. k.}
^{+ 2 Cro. 621.}
^{(i) 4 E.2. Tr. 233. 26 E.3.}
^{58.45 E.3. Dower 50.}
^{(k) Bra. 98. 208 Brit}
^{247. Flet. lib 5.c. 23. 17 E.}
^{9 dower 104. 163 16 E.3.}
^{Quer. Imp. 154. 7 F.3.7.}
^{(l) Bra. 97 Brit. 146.}
^{147.}
^{(m) Lib. Intr. Judgm.}
^{fo. 230.}
^{Lib. 11. fo. 25. 26.}
^{H. rp. rs e. se.}
^{(n) 26 Aff. 3. 9 R. 2. do. v.}
^{cr 184. 1 E.6. dower B.}
^{89. acr.}

Vide 1 E 6 B 29.
+ Ante 30.a.

Lib 7 fo. 38. Lillingtons
caſe. Lib 6. fo. 78. Sciz.
Aburganies caſe
+ 8 Co. 144. + Post. 56.b.
171. a. 179. a. 366.b.
+ Perk. 328. cont.

^{+ F.N.B. 149.c.}
^{Bra. 92. Brdg. cap. 101.}
^{Brt. cap. roden.}
^{+ Ant. 30.2. + 1 Roll.}
^{68. + Doc. pia. 142.}
^{+ Post. 33.b. + 4 Ca. 29.}
^{+ 5 Co. 98. Co 9 108.}
^{+ 1 Roll. 680. send cont.}
^{(o) W.2. c2. 34. Lib. Intr.}
^{224. Flet. lib. 5.c. 22. Br.}
^{c. 106. Mirror. ca. 5. L&G. 5.}
^{+ F.N.B. 40.c.}
^{+ Perk. 354. + 1 Sid. 118.}

[‡] 1 Roll 680. [‡] Perk
354.
(p) 3 E.3.2.6 E.3 29.
9 E.3.29. 19 E.3.Dower
94. 42 E.3. 19.
Vid.Fitz.N.B. 150.b.
8 E.2.dower 153.

[‡] Mod Rep.66.
(q) M.2.&c 3 Eliz Dier
187.b.
10 Ass.p.21.7 E.3.4.
Tr. 10 H.5.Rot.447.
[‡] 11 Co. 38.

26 E.3. Dower 133.
10 E.3. 31.
17 E.2. Dower 164.
19 E.3. quatimp.154.
12 E.4.2.
18 c.1.6. 27. per Paston.

(r) Magna Carta cap.6.
Fleta lib.5.cap.23.
Bract.lib.2.fol.96.
Brit. ca. 103.
[‡] Post.34.b.
19 H.6.1.4. 6 E.6.
Dyer 76.F.N.B.161.
Regist. orig. 175.
1 Marie Dower 101.
[‡] 2 Inst. 17. [‡] F. N. B.
161.a.
(f) Lamb.S.8.120.71. &
divers ancient Manu.
scripts. See the 2. part of
the Institutes cap.7.
(t) Br. & I.4.312. &
Iib 2.96.
Britton cap.103.
Fleta l. 5. c. 23.

[‡] 2 Cro.6.21. [‡] 1 Leon.56.
(u) Regist. Judic.4.
Origin. 173.
Dyer 11 El.284.
Rast.pl.fo.226. &c.
16 E.3 tit. damages 83.
8 E.2. Ibid.81.

[‡] Dr. & Stud.84.a.
(w) 5 E.3.1. 41 E.3.
Dower 46. and not in
the book at large.

[‡] Doc. Pla. 153.
[‡] 3 Co.25.
(x) 16 E.2. Dower 50.
2 H.4.7.9 H.4.4. tit.issue
133. 11 H.4. 40.
13 E.4.7. 14 H.8.25. b.

without coercion Ecclesiastical be reconciled unto her, and permit her to cohabit with him, all which is comprehended shortly in two Hexameters, Sponte virum fugiens mulier & adultera fag' Dower sua caret, nisi sponsi sponte retracta. And (p) if she goeth willingly with or to the abovewife this is a departure and a tarrying, albeit she remaineth not continually with the Dowerer, or if she tarryeth with him against her will, or if he turn her away, or if she cohabit with her husband, by the censures of the Church, in all these cases she loseth her dower. But see notable matter hereof in the exposition upon the statute of W.2.cap.34.

¶ En severaltie per metes & bonds. And yet in some cases where the husband was sole seised, the wife shall not be endowed in sevralty by metes and bonds. As for example (q) If a man seised of lands in fee, took a wife, and infeoffed eight persons, a writ of Dower was brought against these eight persons, and two confess the action, and the other six plead in bar, and descend to issue, the demandant shall have judgment to recover the third part of the parts of the land, in eight parts to be divided, and after the issue being found for the demandant against the six, the demandant shall have judgment to recover against them the third part of six parts of the same lands, in eight parts to be divided, which is worthy the observation. But of this more shall be afterwards laid in this Chapter.

But regularly Littleron's words are to be intended, where the husband was sole seised, so where he was seised in common, thers she cannot be endowed by metes and bonds, as it appear- eth in this chapter. Sect. 44. Note, the endowments by metes and bonds, according to the com- mon right, is more beneficial to the wife, than to be endowed against common right, for then she shall hold the land charged, in respect of a charge made after her title of Dower.

¶ Le quel el avoit issue per sa baron ou nemy. Here in the tenant in Dower, as in many other cases, is preferred before the tenant by the curtesy; But yet this great disadvan- tage the wife hath, that she cannot enter into her Dower by the common Law, but is driven to her Writ of Dower to recover the same, wherein sometime great delays are used, and there- fore the well advised friends of the wife will provide for a jointure to be made to her, as shall be laid hereafter, for by the Statute of (r) Magna Carta cap.7. She shall tarry in the chief house of her husband but by the space of forty days after the death of her husband, within which time Dower shall be assigned unto her, unless it were formerly assigned, &c. but of little effect was that act, for that no penalty was thereby provided if it were not done: which term of 40. days is in law called Quarantine. But if she marry within the 40. days she loseth her Qua- rantine. But some have said that by the ancient law of England the woman should continue whole year in her husbands house, within which time if Dower were not assigned, she might recover it: and this certainly was the law of England before the Conquest. (f) Mulieres vidu- bis senos menses viduas exigunt, atque tum demum cui velint nubant, si quæ ante annum nup- serit dote mulierata fortunis omnibus à priore marito relictis privatur. But for the relief of the widow it was provided by the Statute of Merton made in Anno 20 H.3. cap.1. (which by (t) Bracton is called nova constitutio) that the wife shall recover damages in her Writ of Do- wower from the time of the death of her husband. But herein divers things are observable. First, in what kind of Writ of Dower she shall recover her damages. In a Writ for Dower ad ostium Ecclesiarum, or ex assensu patris she shall recover no damages, because she may enter, and the words of the Statute be Et dotes suas habere non possunt sine placito. Also I have read in an an- cient and learned reading upon this Statute, that it extendeth only to a Writ of Dower, unde nihil habet, and not to a Writ of right of Dower, for in no Writ of Right damages are to be re- covered. 2. She shall recover damages only when her husband dieth seised, that is, seised of the freehold and inheritance, (u) for albeit the husband before the title of dower had made a luit for years reserving a rent, the wife shall recover the third part of the reversion with a thin part of the rent and damages, for the words of the Statute, De quibus viri sui obierunt seiso. 3. Some say that the Demandant in a Writ of Dower, that delayed her self shall not recover damages, therefore let the Demandant take heed thereof. 4. It is necessary for the wife after the decease of her husband as soon as she can to demand her dower before good testimony, in other wise she may by her own default lose the value after the decease of her husband and her damages for retaining of her dower. For if she bring a writ of dower against the heir, and the heir cometh into the Court upon the summons the first day, and plead that he hath been always ready and yet is to render dower, &c. If the wife hath requested her Dower, she shall lose the mean values and her damages, but if she hath requested her Dower she may plead it and issue may be thereupon taken.

But it is holden in some books (w) that a request in pays is not sufficient, and that it is the folly of the wife, that she brought not her Writ of Dower sooner. But the Law and man- (x) books be against it, and the words of the Plea (that he hath been always ready, &c.) probe the same, and the words of the Statute also probe this, Et dotes suas habere non possunt sine placito.

And the reason why tout temps prist is a good Plea in a writ of Dower brought against the heir to bar her of the mean values and damages is, because the heir holdeth by title, and doth no wrong till a demand be made. But in a writ of Writ of Mort Cognage, &c. where the land and damages are to be recovered, there such a Plea is not good, for there the Tenant of the land hath no Title, but holdeth the land by wrong, and the Feoffee of the heir cannot at the first day plead tout temps prist, because he had not land all the time, since the death of the Ancestor.

It is to be observed that the mean values and damages are to be recovered against the tenant in a writ of Dower, as it appeareth in a notable Record (y) between Belfield and Rowse, the Tenant as to parcel pleaded Non-tenure, and for the residue detainment of Charters, upon which Pleas they were at issue, and both Issues found by the Jury against the Tenant, and it is Co. 15. & 9 Co. found further that the husband died seised such a day and year, and had issue a son, and that the Demandant and the son by six years after the decease of the husband together took the profits of the land, and after the son such a day and year died without issue, after whose decease the land descended to the tenant as Uncle and heir to him, by force whereof he entered and took the profits until the purchasing of the original writ, and found the value of the land by the year, and assessed damages for the detaining of the dower, and costs, and upon this Verdict, after debating, the Demandant had Judgment to recover her damages for all the time from the death of her husband without any defalcation. In which case many things apparent therin are observable. Let the Tenant therefore take heed how he plead false Pleas. 6. That this Statute of Merton doth extend to Coptholds (z) where the custom is, that women be dowable. + 9 Co 15.

That if the wife had dower assigned to her in Chancery she shall have no damages, (a) for the words of the Statute be Et viduæ per placitum recuperaverint, &c. So it is if the heir or feoffee assign Dower, and the wife accepteth it she loseth her damages. (z) Tr. 37 Eliz. lib. 4. fo. 30.b. Shawes case. (a) 43 Afr. Pl. 32. + F.N.B. 263. + 1 Roll. 684. 14 H.8.28.

A man seised of lands in fee taketh a wife and granteth a Rent charge, and after maketh a reversion in fee, and taketh back an Estate tail and dieth, the wife recovereth Dower against the issue in tail by reddition, the wife maketh a surmise that her husband died seised, and prayeth a writ to enquire of the damages, and that is granted to her. In this case she holds the land charged with the Rent charge, for by her prayer she accepteth her self dowable of the second estate, for of the first estate, whereof she was dowable her husband died not seised, and so hath concluded her self, wherefore if the Rent charge be more to her detriment than the damages beneficial to her, it is good for her in that case to make no such prayer.

¶ Le quel age que la femme soit, issint que el passe lage de neuf ans al-

mps del mort son baron. Feme, wife, here Littleton speaketh of a wife generally, + 1 Roll 675. generally it is to be understood as well of a wife de facto, as de jure. Therefore if the wife be before the age of 9. years, (b) at the time of the death of her husband, she shall be endowed, of 3 E.1. Dower 172. at age soever her husband be, albeit he were but 4 years old. Quia junior non potest dorem 8 E.1. Dower 122. mereri neque virum sustinere; nec obstat mulieri petenti minor ætas viri. Wherein it is to be 7 E.2. Dower 147. served, that albeit Consensus non concubitus facit matrimonium, and that a woman cannot consent before 12. nor a man before 14. yet this inchoate and imperfect Marriage (from the which 12 E.2.ib. 159.21 E.3.28. either of the parties at the age of consent may disagree) after the death of the husband shall 15 E.3. Dower 67. give dower to the wife, and therefore it is accounted in law after the death of the husband legit. 1 R.2. Dower 54. matrimonium, a lawful marriage, quoad dorem. If a man take a wife of the age of 7 years, and after alien his Land, and after the alienation the wife attaineth to the age of 9 years, and after the husband dieth, the wife shall be endowed; for albeit she was not absolutely 12 H.4.3. 35 H.6.40. dowable at the time of the Marriage, yet she was conditionally dowable, viz. if she attaineth 7 H.6. 11 12. 12 H.4. to the age of 9 years before the death of the husband, for by his death the possibility of Do- Doct. & Stud. is conlummate. Fitz N.B. 140.b. 22 Eliz. Dower 369. Bract. fol. 92. Fleta lib. 5 ca. 21. Lib. intrat. fo. 123. + Post. 37.a. + 5 Co 52. + ante 31 + Cro. Jac. 539.

And so it is if the husband alien his land and then the wife is attainted of felony, now is he disabled, but if she be pardoned before the death of the husband, she shall be endowed. If son endow his wife at the age of 7 years ex assensu patris, if she before the death of her husband attain to the age of 9 years, the Dower is good. But otherwise it is of an original absolute disability; as if a man take an Alien to wife, and after the husband alien the land, and she is made Denizen, the husband dieth, she shall not be endowed, because her capacity possibility to be endowed came by the denization, otherwise it is if she were naturalized Act of Parliament, whereof see more in the Chapter of Villenage.

And the Bishop upon an issue joined in a writ of Dower, Quod nunquam fuerunt copulati + Cro. Car. 35. + 8 Co. mo matrimonio, ought to certifie that they were coupled in lawful Marriage, albeit the 159. 5 Co. 98. + Bouries were under fourteen, or the wife about nine, and under twelve. So it is if a Marriage case. (c) 10 E.3.35. eto, be voidable by Divorce, in respect of Consanguinity, Affinity, Precontract, or such whereby the Marriage might have been dissolved, and the Parties freed à vinculo matri- Fleta lib. 5. cap. 22. Brit. cap. 107. de facto shall be endowed (c) for this is legitimus matrimonium (as in the other case + 7 Co. 44. when

8 Co 150.
(d) Bract. lib.4. fol.504.
Britton ibidem.
Fleta lib.5. cap.23.
32 E.1. Dyer 156.
5 Co 98. # Ante 32 a.
1 Roll. 341.
980.contra.
(c) Tr. 2 Ja.Rot. 1815. in
Common Banco. Inter
Stowell & Wikes in
Dower.
9 Co.cocontra.
Noy. 108.
(f) 50 E.3. 15.b.
Doc.Pla. 140.
(g) W.2. cap. 34.
Mod.Rep. 130. contra.
2 Inst. 68.
(h) Britton cap. 106.
Bracton lib. 4. 301.
(i) 31 E.c.tit.collusion,
29.

(k) Bract.lib. 3. cap. 29.
fol. 92, &c.
Fleta lib.5. cap. 22.
Britton cap. 101.
1 Roll. 677. 682.

when the wife is infra annos nubiles) quoad dotem. And so in a writ of Dower the Bishop ought to certifie, that they were legitimo matrimonio copulati, according to the words of the writ. And herewith agreeth 10 E.3. 35. And (d) Bracton: Quamdiu duravit matrimonium, duravit dotis exactio, eo deficiente deficit dotis petitio, &c. poterit tamen replicare contra exceptionem illam, quod si aliquando fuit matrimonium propter Consanguinitatem, &c. inter eos accusatum, nunquam tamen fuit in vita viri sui solutum nec divortium celebratum. But if they were divorced à vinculo matrimonij in the life of her husband, she loseth her Dower: Otherwise it is if they were divorced (e) Causa adulterij, which is but à mensa & thoro, and not à vinculo matrimonij, as it was adjudged. But some do hold that a wife de facto shall not have an appeal of the death of her husband, but only she that is a wife De jure, in favorem vita. Vid. 50 E.3. fol. 15. 28 E.3. 92. 27 Ass. Stamf. Pl. Cor. 59. and that there unques accouple in loyal matrimonie shall be taken de jure strictly. And so in some case a wife shall have Dower where she cannot have an appeal, (f) and in other cases she shall have an appeal, where she cannot have a writ of Dower, as if she elope, &c. she is barred of her Dower, but not of her appeal, and the reason is, for that the statute (g) barreth her of her Dower, but not of her appeal. So if the husband be attainted of Treason, &c. his wife shall not be endowed, and yet if any do kill him, the wife shall have an appeal, the reason of the diversity shall appear hereafter in this Chapter.

C Apres le mort le baron. (h) Mortuo viro hinc confirmatur Dos. This is intended of a natural, not of a civil death. For if the husband entred in Beligton, (i) the wife shall not be endowed till he be naturally dead.

And in this Chapter Littleton divideth Dower into five parts, viz. Dower by the common law. Secondly, Dower by the custom. Thirdly, Dower ad ostium Ecclesiae. Fourthly, Dower ex aliensu patris. And fifthly, Dower De la pluis beale. And all these Dowers were instituted by a competent livelihood for the wife during her life. (k) Propter onus matrimonij & ad sustentationem uxorius & educationem liberorum cum fuerint procreati si vir premoriatur.

Sect. 37.

Nota per le Common Ley
la femme n'aura pur
sa dower forsque (l)
la tierce part, &c.
This third part is called rationabilis dos, or Dos legitima, because it is the Dower that the Common Law giveth, rationabilis autem dos est cuiuslibet mulieris de quounque tenemento tertia pars omnium terrarum, & tenementorum quae vir suus tenuit in Dominico suo ut de feodo, &c.

Mes per Custome
dascun pais el avera
le moitie: & per le
custome en ascune Ville
& Burgh el avera

lentiertie. Such a (m) custom may extend to a County, City, or an ancient Town without question, and so this custom as here it appeareth by Littleton, may extend to up-to Towns, which are neither Counties, Cities, nor Boroughs. But the surer pleading in such like cases, is to lay the custom within a Mannor or Heigniory if the truth of a case will so bear it. By the custom of Gavelkind (n) the wife shall be endowed of the moiety so long as she keep her self sole, and without chyl, which she cannot wade and take her the for her life. For in that case, Consuetudo tollit communem legem.

And as custom may enlarge, so may custom abridge Dower, and restrain it to a fourth part, &c.

A Nd note, that by the common law the wife shall have for her Dower but the third part of the tenements which were her husbands during the Espousal, but by the custom of some country she shall have the half, and by the custom in some Town or Borough, she shall have the whole. And in all these Cases shall be called Tenant in Dower.

Fitz.N.B. 150.c.
(m) 21 E.4 53. 54.
7 H.6. 26. 22 H. 6. 14.
21 H.7. 17. 40 Ass. 27. 41.
16 E.2. Prescription 53.
43 E.3. 32. 45 Ass. 8.
Dyer 363. 39 E.3. 2. 10.
14 E.3. Barr 277.
15 E.3. tit. Dower 65.
1 Roll. 558. 563.
(n) Vide le statute de
consuetud. Kanckz, &c.
Trin. 17 E.3. coram rege
Kan. in Thesaur. in which
Record Senentia signifi-
cith Widowhood.
Roll. 675.

Sect. 38.

This shall be explained by that which shall be said in the two Sections next ensuing.

Aux soudre auters man-
ners de Dower, cestasca-
oir, Dower que est appelle Dow-
ment ad ostium Ecclesiæ, & Dower
ppelle Dowment ex assensu pa-
ris.

Also there be two other kinds
of Dower, viz. Dower,
which is called Dowment at the
Church door, and Dower called
Dowment by the fathers assent.

Sect. 39.

Dowment ad
ostium Eccle-
sia, est lou home de
leine age seisie en fee
simple que sera espouse
en feme, quant
vient al huis del
monastery ou desglise
estre espouse, & la
pres affiance enter
ur fait, il endowe
feme de sa entier
terre, ou de la moity,
ou d'autre mesme
part, & la overt-
ment declare le quan-
tie & la certainty de
la terre que el avera
ur sa Dower, in ceo
que la feme, apres le
mort le Baron, poit
itter en le dit quan-
tie de terre dont le
baron luy endow, sans
autre Assignment de
lly.

without other Assignment of any.

ge solemnized, and therefore this Dower is good without
ed to his wife. For no Assignment of Dower ad ostium Ecclesiæ can be made before marri-

De ja terre entier ou de le moitie. In ancient time (q) as it appeareth by

If this Dower be made
ad ostium castri sive me-
suagii, it is not good, but ^{10 H. 3.} Dower 200.
ought to be made, ad ostium
Ecclesiæ sive Monasterii.

Et sciendum est (o) quod hæc
constitutio fieri debet in facie
Ecclesiæ, & ad ostium Ecclesiæ, ^{(o) Brafton lib. 2. cap. 18.}
cap. 5. roH. 3. Dower 201
non enim valet facta in lecto ^{Mirror. cap. 1. sect. 3. &}
mortali, vel in camera, vel alibi ^{F.N.B. 150. m.n.}
ubi clandestina fuere conjugia. ^{# Cro. Cat. 351.}
For the law requires that ^{Fleta lib. 5. cap. 22. &c.}
this and like matters be done ^{Britton cap. 101. 108.}
publickly and solemnly. ^{+ F.N.B. 150. + Petk.}

306.

COn home de pleine
age. That is of one and
twenty years. Anno 9 H. 3. ^{9 H. 3. Dower 197.}
Dower 197. A man of the age ^{+ Post. 38. a. contra.}
of eighteen years took a wife, ^{+ 1 Roll. 682.}
and by assent of his Guard=

an endowed her, ad ostium

Ecclesiæ, and it was adjudg=

ed a good endowment, albeit

the husband died before the

age of one and twenty years;

but I hold Littletons opinion

to be good law.

Con la apres affiance
enter eux. Affidare est fi-
dem dare. Affiance or sponsa-
lity, and is derived of this

word spondeo, because they

contract themselves together,

& ideo sponsalia dicuntur (p)

futurarum nuptiarum conven-

tio, & re promissio. But this

Dower is ever after marri-

deed, because he cannot make a

Dower ta ever after marri-

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[‡] 2 Roll. 682. 685.
 (r) F.N.B. 150.
 (s) 20 E.3. Barr 132
 45 E.3.6. Flota lib.
 5.23.
 (t) Britton. cap. 101.
 Bracton lib. 2. cap. 18.

(u) Vid. 14 H.3. dower
 189. 9 H.3. Dower 190.
 8 H.3. Dower 195.
 F.N.B. 150. 40 E. 3. 43.

[‡] Ante 32.b.
 (w) Magna Carta cap. 7.
 See the second part of
 the Institutes cap. 7.
 Flota lib. 5. cap. 23.
 Bracton cap. 103.
 Bract lib. 2. cap. 40.
 Regist. 175.
 Vid. Dyer 6 E.6.76. b. &
 161. a.F. N.B. 161.
 1 Mar. Br. 101.

Nota, surest way.
[‡] Polt. 36.b.

[‡] 1 Rol. 681.
[‡] 2 Inst. 678. [‡] 32 H. 8.
 cap. 5. of executors
 Perk. 80.
[‡] 1 Roll. 681. [‡] 5 Co. 91
 (x) 45 E.3.26. 48 E.3.36
 22 All. 87. 39 E.2.12.
 37 H.6.38. 39 H.6.25.
 1 H.5.8. Brev. 199.
 30 E.3.30. 21 E.4.3.
 Vid. lib. 1. Shelley's case.
 40 E.3.22.

Glanvil, lib. 6. cap. 1. It was taken that a man could not have endowed his wife ad ostium Ecclesie, of more than a third part, but of less he might. But at this day (r) the Law is taken by Littleton here holdeth. In Assignment of Dower (s) where the husband was sole seised, can not be made of the third or fourth part in common, but ought to be in severalty.

C Et la overtment (t) declare le quantite & certaintie del terr. Here be two things that the Law doth delight in, viz. First, to have this and the like openly and solemnly done. Secondly to have certainty, which is the mother of Quiet and Repose. And this word [moity] abovesaid is to be intended of the half in certainty, and not of the moiety in common, which clearly (u) appeareth in that here Littleton saith, the quantity and certainty of the land.

C En ceo cas le femme poet entrer en le dit quantite del terr. And afterwards Section 43. he saith, Nota, que en toutes cases lou le certaintie appiert queux tems ou tenements femme avera pur sa dower, la femme poet entrer apres le mort son Baron. It was institutum in favour and relief of wives, that a man after marriage might assign to his wife certainty of Dower, to the end that a widow should not be driven to a long and chargable suit wherein delay might be used, and in the mean time her life spent, together with her money also. For albeit the (w) Law hath provided, Quod vidua post mortem mariti sui non det aliquid pro dower suo & maneat in capitali mesuagio mariti sui per quadraginta dies post obitum mariti sui, infra quos dies assignetur ei dos sua, nisi prius ei assignata fuerit; &c. & habeat rationabile estoverium suum inter in Communi, yet because there was no penalty or punishment inflicted, the Tenant of the Land may drive her to sue for her Dower. And this continuance of the widow in the capital Marriage, is in Law called a Quarantine, Quarentina, for that it is by the space of forty days, as aforesaid. And if the heir or other tenant of the land put her out, she may have her writ de quarantina habenda. If the wife marry within the forty days she loseth her Quarantine, for her habitation in the house is personal to her, and only given to her in Judgment of Law during her widowhood, albeit the words of the Law be general. And therefore to the end that widows might have certainty of Estate, and that they might enter and not be driven to suit, the Law hath provided Dower ad ostium Ecclesie, and as it shall appear hereafter, Dower ex assentis patris. And lastly, by making of a joynure of which (being no Dower but made in satisfaction of Dower either before or after marriage) it is necessary that something should be said hereafter in his apt place, for that this now falleth out to be the surest way.

C En toutes cases quant le certaintie appiert, &c. la femme poet entrer apres le mort del baron. This is to be inteneded where the certainty appeareth upon an assignment of Dower ad ostium Ecclesie, by ex assensu patris. For if a woman bring a writ of Dower of six pound Rent charge, and she hath Judgment to recover a third part, albeit it be certain that she shall have forty shillings, yet she cannot (x) distren for 40 shillings, because the Sheriff do deliver the same unto her: For wheresoever the writ demands land, Rent, or other things in certain, the Demandant after Judgment may enter or distrain before any seisin delivered to him by the Sheriff upon a writ of Habere facias seisinam. But if Dower where the writ demandeth nothing in certain, there the Demandant after the Judgment cannot enter or distrain until Execution sued, by whitch execution the Sheriff is by his King's writ to deliver the third part in certainty to the Demandant. And so it is when the wife of one Tenant in common demands a third part of a moiety, yet after Judgment she cannot enter until the Sheriff deliver to her the third part, albeit the delivery of the Sheriff shall reduce it to no more certainty than it was.

C Sans autre Assignment de nulluy. For as concerning Dower at the common Law, there must be assignment either by the Sheriff, (as hath been said) by the King's writ, or else by the heir or other Tenant of the land by consent and agreement between them. To a perfect assignment of Dower eight things are to be observed: (a) First, regularly Assignment must be certain, as our Author here saith.

Secondly, It (b) must be either of some part of the land whereof she is divisible, or of Rent or some other profit issuing out of the same, either before judgment or after, which Rent may be assigned to her by parol. But an assignment of other land whereof she is not divisible or of a Rent issuing out of the same, is no bar of the Dower.

Thirdly, The Assignment must be absolute, and not conditional, or subject to any limitation.

Fourthly, It must be made by him that is Tenant of the land; but herein certain diversities are to be observed.

If two or more be Tenantants of lands, (c) the one of them may assign Dower to the

Lib. I. Of Dower. Sect. 40. 35

wife of a third part in certainty, and this shall bind his companions; because they were compellable to do the same by Law. But if one of them assign a rent out of the Land to the wife, this shall not bind his companion, because he was not compellable by the Law thereunto. If the husband make several feoffments of several parcels, and dieth, and the one feoffee assign Dower to the wife of parcel of land in satisfaction of all the Dower which she ought to have in the land of the other feoffee, the other feoffees shall take no benefit of this assignment, because they are strangers thereunto, and cannot plead the same. But in that case if the husband dieth seized of other lands in fee simple, and the same descend to his heir, and the heir endoweth the wife of certain of those lands in full satisfaction of all the Dower that she ought to have as well in the lands of the feoffees as in his own lands, this assignment is good, and the several feoffees shall take advantage of it. And therefore if the wife bring a writ of Dower against any of them, they may touch the heir, and he may plead the assignment which he himself hath made in safety of himself, lest they should recover in value against him, (d) so as there is a privity in this respect between the heir and the feoffees, and by this means the same may be pleaded by the heir that made it. And so it is adjudged in our books, which is a notable case for many purposes.

Fifthly, If assignment be made (e) by any disseisor, abator, intruder, or any wrong doer, of lands or tenements if they came to that estate by collusion and cobin between the widow and hem, albeit the widow hath just cause of action, and the assignment be indifferently made after judgment by the Sheriff of an equal third part, yet shall the disseisee, &c. avoid it, for cobin in this case shall suffocate the right that appertained to her, and so the wrongful manner shall avoid the matter that is lawful.

Sixthly, In assignment by (f) a disseisor, abator, intruder, &c. if there be no cobin, is good, unless it be prejudicial to the disseisee, &c. As if the husband (g) inteforseth the younger son with warranty, the eldest son dissette the youngest son, and endow the widow, in this case, the younger son shall avoid this assignment, for otherwise he shall lose his warranty: but a disseisor, abator, intruder, &c. cannot assign a rent out of the land to her for her Dower, to bind the disseisee, &c.

Seventhly, No assignment can be made, but by such as habe a freehold (as hath been said) or hold, but a gardian in chivalry may assign Dower, as shall be said hereafter, because a writ Dower lieth against him, and not against a gardian in socage.

Eighthly, And before the gardian in chivalry enter, the heir within age (i) may assign dower, & the gardian may waive the wardship. And so briefly you have heard, of what, by whom, and whom the assignment must be made. But there needeth neither liberty of seisin, nor waiting, any assignment of Dower, because it is due of common right.

Sect. 40.

Dowment ex assensu Patris. **D**owment by assent of the father, lou le pier est sei- de Tenements en seised of tenements in e, & son fits & heire fee, and his son and parent, quant il est heir apparent when spouse, endowe sa he is married, endowme al hys delieth his wife at the onasterie ou det Monastery of Church lglise, de parcel de door, of parcel of his terres ou Tene- fathers lands or tenements son pier de af- ments with the assent son pier, & assignt of his father, & assigns quantitie & les the quantity and parcels. En ceo case cels. In this case af- fes le mort le fits, ter the death of the

Lou pier est seisi de Tene- ments in fee. Tenant for life of a Carve of land, the reversion to the father in fee the son and heir apparent of the father endoweth his wife of this carve, by the assent of the father, the Tenant for life dieth, the husband dieth, the reversion was a Tene- ment in the father, and yet this is no good endowment ex assensu Patris, because the father at the time of the as- sent had but a reversion expe- ciant upon a freehold, whereof he could not habe endowmed his own wife, & albeit the te- nant for life died, living the husband, yet quod initio non + Sid. 3. + Post. 36.b. valeat, tractu temporis non con- valescat

+ 3 Co. 11. + 9 Co. 18.
+ Mo. 26. Doc. Pla. 141

(d) 33 E. 3. tit. Judg. 254
8 E. 3. 69. 17 E. 3. 58.b.
3 E. 3. tit. Dower 76.
3 E. 3. Vouch. 96. See the second part of the In- fit. W. 1. cap. 49.

+ 2 Co. 67. + 1 Roll.
549. + Sid. 21. + Post.
357.

(e) 25 Ass. p. 1. 44 Ass. 29.
44 E. 3. 46. 27 Ass. 74.
11 H. 4. 60. 15 E. 4. 4.
19 H. 8. 12. 1. tit. 83. 151.

+ 3 Co. 78. + 6 Co. 8.a.
+ 5 Co. 30.b.

(f) 12 Ass. p. 20. 21 E. 3.
12.

(g) 3. E. 3. tit. Dower 77
16 E. 2. tit. Dower Statute
+ Post. 357.

(h) 31 E. 1. Dower 151.
29 Ass. 68. 15 B. 3.
Dower 69.

+ 1 Roll. 689. + 6 Co. 57.
(i) 7 R. 2. admesurement
4. F.N.B. 148.f.
+ Post. 38.b.

Brit. ca. 109. Fleta lib. 5
ca. 22. 23. Bract. lib. 5. 305.
6 E. 3. 34. F.N.B. 1504
+ 1 Roll. 677.

valescer. And for the most part Dower ad ostium Ecclesie, and ex assensu patris ensue the nature of a Dower at the common Law. And for these the wife may have a writ of Dower, albeit they be certain, as for the third part at the Common law.

Et son fits & heir apparent. It must be such a son and heir apparent, as must continue an heir apparent, and therefore the youngest son and heir apparent, cannot endow his wife ex assensu patris, of lands

whereof the father is seised in fee of the nature of Borough English, because the father may have another son, and then the husband is not heir apparent: and it is in respect of the constant and perpetual appearance, that the son and heir apparent may endow his wife of his father land. And so it is of lands in Gavelkind: (k) and this is the reason that Dower ex assensu fratri, or consanguinei, is not good, for that albeit he is heir apparent at that time, yet for the common possibility that he may have issue, and every issue that the brother or cousin should have, afterwards, shall exclude him, he is no such heir apparent as the Law intendeth. (l) But if endowment ex assensu matris, is as good as ex assensu patris, because there is an apparence of constant and perpetual heir. And some have said, that if the father after his assent be attainted of treason or felony, that the wife in that case loseth her Dower, because her husband doth not continue heir.

(k) 8 H. 3. Dower 193.
9 H. 3. Dower 191. 11 H. 3.
Dower F. N.B. 150 l.
29 E. 3. Dower 134.
(l) F. N. B. 150. c. Flet. l. 5.
cap. 22. Bract. lib. 4. 305.
Ambr. Gorges case lib. 6.
fol. 22.

(m) 2 H. 3. Dower 199.
6 E. 3. 34. 8 E. 2. Dower
154.

2 H. 3. Dower 199.
Post. 38 a.
(n) 9 H. 3. Dower 190.
F. N. B. 150. m.

2 E. 2. Dower 154.

‡ 2 Co. 5. † Post. 229. a.

‡ 2 Roll. 21.

(o) Br. cl. 112. fo. 33, &c.

& l. 5. fo. 396. Bract. fol. 34 is an Instrument written in parchment or paper, (o) whereunto ten things are necessarily incident: Viz. First, Writing. Secondly, in parchment or paper. Thirdly, a person able to contract. Fourthly, by a sufficient name. Fifthly, a person able to be contracted with. Sixthly, by sufficient name. Seventhly, a thing to be contracted for. Eighthly, apt words required. Ninthly, Sealing. And tenthly, Delivery. A Deed cannot be written upon leather, cloth, or the like, but only upon parchment or paper, for the writing on them can least vitiate, altered, or corrupted.

If a Deed (p) be alledged in Count or Plea, regularly it must be shewed to the Court, to end the Court may judge whether there be apt words to make it a good contract according to the rule of Law, whereof more shall be said in the chapter of Conditions. But if non est factum, be pleaded, because thereby the sealing, delivery, or other matter of fact is denied, it shall be tried by the Country. Of Deeds some be indented, and some be Deeds poll. Of indented, some bipartite, some tripartite, some quadripartite, &c. Whereof more shall be said in the Chapter of Conditions. Also of Deeds, some be enrolled, and some (q) be not enrolled; if it be law according to the Statute of 27 H. 8. cap. 10. it must be enrolled in parchment for the Crown and continuance thereof, and not in paper, and so it was resolved in Parliament by the Justices

la femme entra en son, the wife shall enter into the same parcel without the assignment of any. But it hath been said in this case, That it behoveth the wife to have a deed of the Father to prove his assent and consent to this endowment. M. 40. E. 3. fo. 41.43.

Quant il est espouse, endow sa femme. (m) In this case, albeit the freehold inheritance is in the father, yet in respect (as hath been said) of the constant and perpetual appearance of the heir, the heir apparent doth endow, and the father doth but assent. And therefore where the father did endow the wife of his son and heir apparent, that endowment is holden void, because the husband in that case must endow, and the father assent.

And it is holden in 2 H. 3. Dower 199. That if the heir apparent be within age, yet the endowment ex assensu patris is good. Note, Littleton in the case of Dower ad ostium Ecclesie, doth put the husband of full age, but here of the Dower ex assensu patris, he speaketh generally.

Et assigne le quantitie & les parcels. So as both in Dower ad (n) ostium Ecclesie, & ex assensu patris, the certainty must be expressed. And therefore where books speak of a moiety, it is intended (as hath been said) of an half in certain.

Apres la mort le fitz sa femme entera. In this case after the death of the husband the wife shall enter, or have a writ of Dower albeit the father be alive.

Que il cov' al femme daver un fait prov' son assent a tel endowment.

Un fait. A Deed, factum, this word [Deed] in the understanding of the common Law is an Instrument written in parchment or paper, (o) whereunto ten things are necessarily incident: Viz. First, Writing. Secondly, in parchment or paper. Thirdly, a person able to contract. Fourthly, by a sufficient name. Fifthly, a person able to be contracted with. Sixthly, by sufficient name. Seventhly, a thing to be contracted for. Eighthly, apt words required. Ninthly, Sealing. And tenthly, Delivery. A Deed cannot be written upon leather, cloth, or the like, but only upon parchment or paper, for the writing on them can least vitiate, altered, or corrupted.

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‡ 5 Co. 74.76.

(p) 4 E. 2. Fines 116.

14 E. 2. Ley 79. 4 E. 2.

Ley 78. 27 H. 6. 10.

27 H. 8. 22. F. N. B. 122. l.

‡ 5 Co. 18. † Post. 229. a.

(q) Br. fo. 101. Bract. l. 2. fol. 33. Flet. lib. 3. c. 14.

‡ 2 Inst. 673.

In Anno 22 Eliz. Now for the rest of the parts of a Deed, you shall read thereof plentifully in our Books, and in my Reports; which by this short instruction you shall easily understand.

¶ Un fait de seffement. It is properly called Charta seffamenti, and yet if such deed be denied, the plea is non est factum. So as of Deeds some concern the realty, as here and some mixt, whereof more shall be said in the Chapter of Releases.

If a man deliver a writing sealed to the party to whom it is made, as an escrow to be his upon certain conditions, &c. this is an absolute delivery of the Deed, being made to the party himself, for the delivery is sufficient without speaking of any words (oth: r wise a man at is mure could not deliver a Deed) and tradition is only requisite, and then when the words are contrary to the Act which is the delivery, the words are of none effect, non quod dictum est, sed quod factum est inspicitur. And hereof though there hath been (r) variety of opinions, yet is the Law now settled agreeable to judgments in former times, and so was it received by the whole Court of Common-pleas. But it may be delivered to a stranger, as an escrow, &c. because the bare act of delivery to him without words worketh nothing. And this the ancient diversity (s) in our Books, the record whereof I have seen agreeable with the glossion of our old books. And as a Deed may be delivered to the party without words, so may Deed be delivered by words without any act of delivery, as if the writing sealed lieh upon e table, and the feoffor or obligor saith to the feoffee or obligee, Go and take up the said writing, it is sufficient for you; or it will serve the turn, or take it as my deed, or the like words, it is a sufficient delivery.

Of Deeds and their distinctions you shall read excellent matter in antiquity. (t) Cartarum, a regia, alia privatorum, & regiarum, alia privata, alia communis, & alia universitatis. Privatarum, a de puro feoffamento & simplici, alia de feoffamento conditionali sive conventionali, alia de recognitione pura, vel conditionali, alia de quiete clamantia, alia de confirmatione, &c. Verba intentioni non e contra debent inservire.

Carta non est (u) nisi vestimentum donationis. Carta non est nisi vestimentum orationis. Nemo mutur armare adversarium suum contra se. Scriptum est instrumentum ad instruendum quod vult. Carta est legatus mentis. (w) Benignæ sunt facienda interpretationes cartarum propter implicitatem laicorum ut res magis valeat quam pereat. Nihil tam (x) conveniens est naturali & iurati quam voluntatem Domini volentis rem suam in aliud transferre ratam habere.

Re, verbis, scripto, consensu, traditione
Junctura uestes sumere pacta solent,

Pl. Com. in Throgmorts case fo. 161.b.

Verba cartarum fortius accipiuntur contra proferentem. Generale dictum generaliter est intelligendum: Verba debent intelligi secundum subjectam materiam. Carta de non ente non valet.

Note, the father may (a) make a Deed to the wife of his son, and so is the Law holden, for at the fathers land by his assent is charged with a future freehold wherunto a Deed is requisite, but to a Dower Ad ostium Ecclesiæ no Deed is requisite. And here it is not well done him that made the addition to our Author to bouch 44 E. 3. fo. 45. because the Author himself bouched it not, for if he (b) meant to have bouched authoritie, he would have bouched more than one in this case, and thole that (c) he bouched he would have cited truly this case is mistaken both in the year and in the leaf, for where it is cited in 44 E. 3. it is 40 E. 3. and where he saith it is fo. 44. it is fo. 43.

In assignment of Dower (d) either ad ostium Ecclesiæ, or ex assensu patris, may be made of more in a third part. But the ancient law was that no greater assignment could be made in those cases but of a third part, but less he might, as appeareth in Glanvil.

(a) E. 2. Dower 126.
8 E. 2. Dower 154.
6 E. 3. 34. 40 E. 3. 45.
(b) 11 H. 3. Dower 186.
14 H. 3. Dower.
(c) 2 E. 2. Dower 125.
Vid. Stat. Wallia anno 12 E. 1. fo. 18. in veteri Magna Carta.
47 H. 3. Dower 174.
(d) F. N. B. 150. p.

Glanvill lib. 6. ca. 1. 2. 3.

Sect. 4 I.

Et si apres la mort le baron enter & agree a assentiel dower de legits dowers ad ostium Ecclesiæ, &c. donque

And if after the death of her husband she entreteth, and agree to any such dower of the said dowers at the Church door

Est conclude a claimor as cun auer dower per la common ley. Wherein a diversity is to be observed between a dower ad ostium Ecclesiæ, or ex assensu patris, and

‡ 1 Rol. 64.

Lib.I. Cap. V.

Of Dower.

Sect. 41.

^{# Doc. Pla. 149.}
Vernons case lib. 4. fo. 1.
¹ Mariz, Dyea 91.
³ E. 3 Scire fac. 99.
²⁰ E. 4. 3.

^{+ 4} Co. 1. contra 9.

[#] Dyer 248. a. 3 17. a.
²⁷ H. 8. cap. 10.
(a) 12 E. 2. Dower 158.
²⁷ H. 8. cap. 10. versus
finem.
^{+ 4} Co. 1. 3. ^{+ 2} Cro. 489.

[#] Sid. 3. Ante 35. a.
[#] Where she has Election
to bring Dower, or ac-
cept the Estate limited.

Leake and Randals case,
lib 4. fo 4.
^{+ 3} Co. 25. 27.

Vid. Vernons case ubi
supra. fo. 2. b.

Dyer 19 Eliz. 358.

Brit. cap. 102, 103.

and a joyniture or estate made to the wife in satisfaction of her Dower, for one of those Dowers being assented unto is a bar of the dower at the Common Law; but a joyniture was no bar of her Dower at the Common law. For a right or title that one hath to a freehold cannot be barred by acceptance of collateral satisfaction. But a woman cannot have a double dower, viz. ad ostium Ecclesiæ, &c. and at the Common law, for the wife of one husband can have but one dower. But since Littleton wrote, by the

Statute of 27 H. 8. if a joyniture be made to (a) the wife, according to the purview of that statute it is a bar of her dower, so as the woman shall not have both joyniture and dower; and to the making of a perfect joyniture within that statute six things are to be observed. First, her joyniture by the first limitation is to take effect for her life in possession or profit presently after the decease of her husband. Secondly, that it be for the term of her own life, or greater estate. Thirdly, it must be made to her self, and to no other for her. Fourthly, it must be made in satisfaction of her whole dower, and not of part of her Dower. Fifthly, it must either be expressed or averred to be in satisfaction of her dower. And Sixthly, it may be made either before or after marriage.

Concerning the first, if a man make a Feoffment in fee of Lands or Tenements either before or after marriage to the use of the husband for life, and after to the use of A. for life, and then to the use of the wife for life in satisfaction of her dower, this is no joyniture within the statute, because by the first limitation it was not to take effect in possession or profit presently after the death of her husband. And albeit in that case A. should die living the husband, and after the death of the husband the wife entreth, yet this is no bar of her dower, but she shall have her dower also, because it is not within the said Statute, (as it hath been said) by the Common Law it was no bar of her dower. Secondly, It must be either in fee tail, or for term of her own life, for an estate for life or lives of one or many other, or to her for all hundred or a thousand years, &c. if she live so long, or without such limitation is no bar of her dower, albeit they be expressly made in satisfaction of her dower. Causa qua supra. Thirdly, If an estate be made to others in fee simple, or for her life upon trust, so as the estate remain in them, albeit it be for her benefit, and by her assent, and by express words to be in full satisfaction of her dower, yet is this no bar of her dower. The fourth is so plain that it needeth not any example. Fifthly, a devise by Will cannot be averred in satisfaction of her dower, unless it be so expressed in the Will. Sixthly, If the joyniture be made before marriage, the wife cannot have it and claim her dower at the Common Law, but if it be made after marriage, she may have the same, and claim her dower. I have touched these points the more summarily because they are resolved at large with the reasons thereof in Vernons case ubi supra. So as to comprehend all in few words, a joyniture (which in common understanding extendeth as well to sole estate as to a joynit estate with her husband) is a competent livelhood of Freehold for the wife of lands or tenements, &c. to take effect presently in possession or profit after decease of the husband for the life of the wife at the least, if she her self be not the cause of determination or forfeiture of it. Which see more at large in Vernons case ubi supra. If a joyniture be made to wife of lands before the Cobertura, and after the husband and wife alien by fine those lands so conveyed for her joyniture, she shall not be endowed of any of the other lands of her husband. But if the joyniture had been made after marriage, notwithstanding the alienation by the husband and wife thereof by fine, yet seeing her estate was originally wataable, and the time of her election came not till after the decease of her husband, she may claim her dower in the residue of her lands. But in the other case, the joyniture of the wife made before marriage was not wataable at all, now as the dower ad ostium Ecclesiæ, and ex assensu patris, is better for the wife because in respect of the certainty she may enter, than the dower at the Common law, where it is given to her real action, and therefore Britton calleth Dower ad ostium Ecclesiæ, and ex assensu patris, establishment of Dower by the husband and assignment of Dower after his decease (for nothing that is uncertain is established;) so a joyniture (that hath the force of a bar of Dower by the said act of 27 H. 8.) is as hath been said, more sure and safe for the wife than either Dower

el est conclude de &c. then she is concluded to claim any other dower by the Common Law of any the Lands or Tenements which were her husbands. But if she will she may refuse such dower at the Church door, &c. and then she estre endow solonque may be endowed after the course of the Common Law.

Statute of 27 H. 8. if a joyniture be made to (a) the wife, according to the purview of that statute it is a bar of her dower, so as the woman shall not have both joyniture and dower; and to the making of a perfect joyniture within that statute six things are to be observed. First, her joyniture by the first limitation is to take effect for her life in possession or profit presently after the decease of her husband. Secondly, that it be for the term of her own life, or greater estate. Thirdly, it must be made to her self, and to no other for her. Fourthly, it must be made in satisfaction of her whole dower, and not of part of her Dower. Fifthly, it must either be expressed or averred to be in satisfaction of her dower. And Sixthly, it may be made either before or after marriage.

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ad ostium Ecclesiae, or ex assensu patris, for besides it is as certain as those others, and she may enter into it, after the death of her husband and not be driven to her action. She shall not be barred of her joynure albeit her husband commit treason or felony, as he shall be both of her Dower ad ostium Ecclesiae, and ex assensu patris by the Common Law. But now at this day by the Statute of 1 E. 6. cap. 2. and 5 E. 6. cap. 11. a wife shall not lose any title of Dower which she was accrued, by the attaintier of her husband by any manner of murder or other felony whatsoever. But (a) if the husband be attainted of high treason or petit treason she shall be (b) barred of her Dower at this day, so long as that attaintier standeth in force.

Conclude, cometh of the (c) verb concludo, which is derived of con and cludo to determine, to finish, to shut up, to stoppe or bat a man, to plead or claim any other thing. Vid. Stopple.

Braet. 311. lib. 4.
† 4 Co. 1.
Britton ca. 15.
1 E. 6. ca. 6. 5 E. 6. ca. 11.
† Post 40. b.
(a) Stanf. 195. b.
(b) Vid. in the chapter of Garranty. Sect.
(c) Pl. Com. 276. b.
per Walsh.
Vid. Sect. 693. 695. 697.
679.

Sect. 42.

Et nota que nul femme sera en dower ex assensu patris en le forme avantdit, mes sou la baron est son & heire apparent a son pere. Quare de ceur deur cases de dowment ad ostium Ecclesiae, &c. si la femme al temps del mort la baron, ne passe lage de ix ans, si el avera dower ou non.

And note that no wife shall be endowed ex assensu patris in form aforesaid, but where her husband is son and heir apparent to his father. Quare of these two cases of dowment ad ostium ecclesiae, &c. if the wife at the time of the death of her husband be not past the age of 9 years whether she shall have dower or no.

NUl femme sera endowed, &c. Of this sufficient hath been said before.

Quare de ceux deux cases de dowment ad ostium Ecclesiae, &c. And it seemeth that these dowters being made by assent, &c. that the same are good albeit the wife be within the age of nine years, for Consensus tollit errorum. But without question a joynure made to her under or above the age of Nine years, is good.

* Ante 33.a. † Post. 125. b.
† Cro. Eliz. 664.
† Hob. 5.

Sect. 43.

Et nota que en tous cases sou le certainty appiert au plus tres ou tene- ments femme ayez pur sa dower, la le femme poit entre apres la mort la baron, sans assignement de nul- lup. Mes sou le cer- statutie ne appert, si come deltre endow de la tierce part da- ver en sevraltie, ou del mostre felonie de tener

And note that in all cases, where the certainty appeareth what Lands or Tenements the wife shall have for her Dower, there the wife may enter after the death of her husband without assignment of any. But where the certainty appears not, as to be endowed of the 3. part, to have in sevralty, or the moiety according to the custom

Et nota que en tous cases, &c.

In all cases where the demand of the Dower is cer- tain as the Dower is ad ostium Ecclesiae, or ex assensu patris, there the wife after the death of the husband may enter. But where the demand is uncertain, as in wites of Dower at the com- mon Law, there albeit the thing it self be certain, yet shall she not take it without assignment. As if a woman bring a wite of Dower of three shillings rent; albeit she ought to be endowed of one shilling, yet cannot she affect judgment distrein for the de- pence before assignment, be- cause the demand was un- certain.

* Inst. 678.

40 E. 3. 22. 43. 45 E. 3. 4.
20 E. 3. burr. 132.
8 E. 2. Entry 75.

† Roll. 681. 682.

certain. And so it is if two tenants in common be, and the wife of one of them bring a writ of Dower to be endowed of a third part of a moiety, & have judgment to recover, yet cannot she enter without assignment, albeit the assignment cannot give her any certainty, because her husband's estate was uncertain. See more of this before Section 39.

Of Dower.

Sect. 44, 45.

en severaltie, en tielz to hold in severaltie, cases il convient que such cases it behoved sa dower soit a luy that her Dower be assigne ap's le mort ned unto her after the del Baron, pur c' que death of her Husband non constat devant because it doth not appear before assignement quel part what part of the landes des terres ou tene- ments el avera pur have for her Dower.

Sect. 44.

Mds si soient deux joyn- tenants de certain terre en fee, & l'un alien ceo que a luy assiert a un autre en fee, que prent femme & puis devie; en ceo cas la femme pur sa dower avera le tierce part de la moitie que sa baron ad purchase, a tener en common (come sa part amoun- tera) obesque l'heire sa baron, & obesque l'autre jointenant que ne aliena pas, - pur ceo que en tiel cas sa dower ne poit estre assigne per metes & bounds.

But if there be two jointenants of certain land in fee, and the one alieneth that which belongeth to him to another in fee, who taketh a wife, and after dieth. In this case the Wife for her dower shall have the third part of the moitie which her husband purchased, to hold in common (as her part amounteth) with the heir of her husband, and with the other joyntenant, which did not alien. For that in this case her dower cannot be assigned by metes and Bounds.

Sect. 45.

The reason of this diversity is for that the jointenant which surviveth, claimeth the land by the feoffment, and by survivorship, which is above the title of Dower, and may plead the feoffment made to himself without naming of his companion that died, as shall be said hereafter in his proper place, but tenants in common have several free-holds and inheritances, and their moieties shall descend to their several heirs, and therefore their wives shall be endowed.

Et est ascavoir, q' la femme ne se- re c' my endow de ter- res ou tenements que sa baron tient joint- ment obesque un au- tre al temps de son morant: mes lou si tient en common au- terment est, come en le case prochain avant- dit

And it is to be understood that the wife shall not be endowed of lands or tenements which her husband holdeth jointly with another at the time of his death: but where he holdeth in common, otherwise it is, as in the case next above-said.

Sect.

Sect. 46.

Et est ascavoir que si tenant en le taille endowa sa femme ad ostium ecclesiae, come est avant ceo servera pur petit rien al femme, pur ceo que apres la mort la bâton, l'issue en le taile puit entrer sur le possession la femme : Et issint puit celuy le revers, si ne soit issue en le taile en vie, &c.

And it is to be understood, that if tenant in tail endoweth his wife at the Church door, as is aforesaid, this shall little or nothing at all avail the wife, for that, that after the decease of her husband, the issue in tail may enter upon her possession, & so may he in the reversion, if there be no issue in tail then alive.

The Reason of this son of this is for that tenant in tail is restrained by the said Statute of 13 E. I. de donis conditionalibus. And so did our Authors take the law in his learned reading. Here our Authors reason is a fine, and there such an endowment is not to be made because it is to no end.

Vide Sect. 194.

Sect. 47.

Auri si hōe seisi en fee simple esteant dans age endowa sa femme al huiz del monaste. e ou deglise, & debie, & femme enter, en ceo cas hētre le baron luy puit assister. Mes auterment il (cōe il semble) lou la fer est seisié en fee, & le ts desus age endow sa femme ex assensu patris, le tier doncq; esteant de leur age.

Also if a man seised in fee simple being within age endoweth his wife at the Monastery or Church door, and dieth, and his wife enter, in this case the heir of the husband may out her. But otherwise it is, (as it seemeth) where the father is seised in fee, and the son within age endoweth his wife *ex assensu patris*, the father being then of full age.

The Reason of this diversity is for that in the first case the husband within age is seised, & therefore he being within age cannot by a voluntary act bind himself : otherwise it is where he doth an act whereunto he is compellable by law, but in the later case the father which giveth the assent is seised of the freehold and inheritance, & the son therein hath nothing, and therefore his heir shall not avoid it in respect of his infancy.

^{+ 2 Inst. 673;}
F.N.B. 192. ^{+ 2 Rot. 287.}
^{+ Post. 172.a.}
Vide 9 H. 3 tit. dower 197.

^{+ Ante 34. 3. contra.}
^{+ 9 Co. 84. + 1 Rot. 138}

Sect. 48.

Auri il y ad un autre endowment que est appelle endowment de la plus taile. Et cco est come a tel case, que home tenu de xl. acres de terre, & il tient vint

Also there is another dower which is called dowment de la plus beale. And this is in case where a man is seised of forty acres of land, and he holdeth twenty acres of

Et le Seignior de que le terre est tenu en Chivalrie enter en les vint acres tenu de luy. For he is not possessed as a gatetn against whom a writ of dower lyeth, until he doth enter of the hardship of the body he is possessed before tenure because

cause it is transitory, but he is not possessed of the land until he enter because it is permanent. And therefore if he doth not enter, the heir within aye may assign Dower as hath been said, and as it appears afterwards.

[#] Ante 35.
Vid. le statut de bigamis
cap. 3.

Si en tel cas el port breve de dower envers le Gardein en Chivalrie.

Abilet (a) the Gardein in Chivalrie or the Grantee of the King of a wardship hath but a chattel during the minority of the heir, & the woman shall recover a freehold in a writ of Dower, yet after the Gardein as is aforesaid, hath entered into the land, that writ lyeth against him, & not against the heir who is tenant of the freehold, because the law hath trusted the Gardein to plead for the heir within age, and that is in his custody, & also for his own particular interest, and by this diversity all the Books be reconciled. So likewise if the gardein die, the wife shall have a writ of Dower against his executors, and if there be two Executors, and one of them alone take the profits, the writ of dower shall be maintain'd against him only. If a man be possessed of the wardship of certain land, either jointly with his wife, yet the writ of Dower lyeth against the husband only. Gardein in socage shall not endow her self de la plus beale without judgment as shall be said hereafter.

Le Gardein en chivalrie port pleader.

The authority of Littleton is direct that the Gardein may plead this plea. But hereof ariseth two questions. First whether if the heir be touched by the tenant in the writ of dower in the guard of the Gardein, whether he coming in as Mouchee may plead that plea. The second is whether if the Gardein in socage have not sufficient, as

acres de les dits xl. acres de terre dun p service de chivalrie, & les autres vint acres de terre duu au ter en socage, & pret feme, & ont issue fits, & moult, son fits esstant deins lage de xiiij. ans, & le Seignour de que la terre est tenus en chivalrie, enter en les xx. acres tenus de lui, & eux ad come gardein en Chivalrie durat le nonage lenfant, & la mere de lenfant enter en le remenant, & ceo occupie come gardein en socage: si en tel cas le feme port brefe de dower enus le gardein en chivalrie, de stre endow de les tenements tenus per service de chivalrie e le Court le Roy, ou en autre Court, le gardein en chivalrie puit plede en tel cas tout cest matter & monstre coment la feme est gardein en socage, coment devant est dit, & prie que serra adjudge per la Court que le feme lui mesme endowera de le plus beale de le tenements que el ad come gardein en the most. fair, of the socage solonque le val' tenements which sh de le tierce part hath as gardein in So

(a) 44 E.3. 13.4 H.61.1.
Statf.prer.13. 6 E.3.15.
16 E.3.breve 657.
Temps E. 1. breve 863.
11 E.3.breve 473.
45 E.3.5. 17 E.3.70.
1 H.7.17. 4 H.7.1.
[#] 6 Co. 56.
4 H.7. ailde Roy 33.
28 E.3.13.
9 H.6.6.b. 39 E.3.8.
8 E.2.Dower 169.
8 E.2.breve 809.
22 E.4. Dower 16.
[#] 9 Co.17. [#] 1 Rol.287.
[#] Cro. Gar.307. [#] Hob.
169.

2 E. 3. 52.

2 E.2. 15. & 31.
38 E.3.37.
47 E.3.9.b.

le clainé daver
les tenemens te-
ns en chivalrie per
bref de Dower.
et si la feme ceo ne
ut dedire, doncque le
judgemēt sera fait,
le gardeine en
chivalrie tiendra les
terres tenus de luy
durant le nonage len-
tant, quit de la feme,

cage, after the value of
the third part which
she claims by her writ
of dower, to have the
tenements holden by
Knights Service. And
if the wife cannot
gainsay this, then the
judgment shall be gi-
ven, that the gardein
in Chivalry shall hold
the lands holden of
him during the nonage
of the Infant, quite
from the woman, &c.

if the Land holden by service
of Chivalry be thirty acres,
and the lands holden in so-
cage but five Acres, wheret
she shall be endow'd by par-
cels, viz. to recover five Acres
against the Gardein in Chi-
valry, and to retain five A-
cres. And as to the first the
Gardein shall as wel plead it,
when he comes in as Mou-
chee, as when he is Tenant.
And as to the second some say
that the Demandant in the
writ of Dower must have As-
sets in her hands to the value
of her Dower, so as she shall
not be partly endow'd against
the Gardein, and partly re-
tain in her own hands. And
they say, that the Judgment
should be in part, that is, as

5 E.3.60. 2 E.3.31.
Lib.intrat. Dower fol.
22.a.
18 E.3.4.b.

the land in socage in sev'ralty, and as to the land in Chivalry to recover the third part;
d compare it to the case in 8 E. 4. 3. that damages shall not be recovered, partly against the
e defendant in an appeal, and partly against the Abertoys, but entirely either against the
e or the other. And Littleton here putteth this case that the Gardein in socage hath Assets
value, and seeing it is a Dower against common Right, or against the Gardein according
common Right. But (a) yet by the Book in 25 E. 3. 52. b. and others it appeareth that
may in this very case retain for part, and recover against the Gardein for part.
Gardein in Chivalry (b) shall plead in bar of her Dower, Detainment, or Eloigning of
Body of the Ward, because his marriage doth appertain unto him: And if the heir come
(c) as Mouchee, he shall plead the same Plea. But he shall not plead Detainment of
the Charters, (d) because the Charters concerning the Inheritance of the Heir, belong not
the Gardein. The Gardein in Chivalry (e) may assign Dower of the Lands and Te-
ments he hath in Ward, or if he assign a Rent out of those Lands in allowance of her
Dower, it is good. If the Gardein in Chivalry assign too much for her Dower, the Heir
will have a Writ of Admesurement by the Common Law. And so (f) if the Heir within
assign before the Gardein enter, to the wife too much in the Dower, the Gardein shall
be a Writ of Admesurement, by the Statute of West. 2. cap. 7. And if the heir within age,
ox the Gardein enter into the land, assign too much in Dower, he himself shall have a
Writ of Admesurement at full age; And some have said, that in that case he may have it with-
out the Gardein assign over his Estate, his Assignee shall have no Writ of Admesurement,
cause it was a thing in Action. Also the heir shall have an (h) Admesurement, for the As-
signment in the life of his Ancestor, by the Common Law, (i) and a Writ of Admesurement
th upon an Assignment in Chancery.

14 H.7.26 Keble.
‡ 2 Inst. 317. ‡ 12 Co.
125. 126.
(a) 25 E.3.52 b. 4 E.2.
tit. disclsi. 10. Regist.
Judic. 26.

2 ‡ Inst. 262.
‡ Doc. Pla. 149.
Lib.Intrat. 22. 16 E.3.
breve 657.
20 E.3. Judgment 175.
(b) 7 E. 3. 57. 8 E.3.71
(c) 17 E.3.58.
(d) 10 E.3.50 6 El.Dy.

230.
(e) 3 E.3. Dower 75.
8 Ed.2. Dower 155.
W.2.cap.7.
† F.N.B. 148 9.
‡ 2 Inst. 367.
(f) Brdg.1.4.314..Reg.
origin. 171. Flet.1. Sec.22.
7 E.2. tit. Admes. 13.
F.N.B. 149.
(g) 7 R.2. Admes. 4.
F.N.B. 148 i.e.

(h) 7 R.2.ub.su. F. N. B.
149.a.
(i) 7 R.2.ub.sup.12 H.6.
Admes. 9. F. N.B. 194.
25 E.3.51.
‡ Post. 168.a.‡ Cro. Car.
442.‡ 1 Rol. 201.

22 E.4. Dow.16. 16 E.3.
Wat.100. 45 E.3.6.

¶ Donques le judgment sera fait que le gardein en Chivalrie tiendra
Terres tenus de luy durant le nonage lenfant, quite de la feme, &c.

¶ Judgment. Judicium quasi juris dictum, the very voice of Law and Right, and there-
e. Judicium semper pro veritate accipitur. The ancient words of Judgment are very significant
consideratum est, &c. because that Judgment is ever given by the Court upon due consideration
of the Record before them: And in every Judgment there ought to be three Persons, Actor,
and Judge. Of Judgments some be final, and some not final, whereof you shall read
hereafter. And now to return to our Author, it is material that these words (& cetera)
explained at large, viz. Et quod praedicta A. (the Demandant) capiat de terris hæred' prædi-
in custodia sua existent' ad valentiam præ' 3. Partis cum pertinen' nomine dotis suæ
prædict' 3. parte superius per eam petit'. Now some are of opinion, That upon this
judgment the Demandant may not in any sort endow her self of the land, because she can-
not do an act to her self, but she shall recoupe the third part of the Profits upon her account,
to be endowed against the heir at his full age. But observe what Littleton saith in the next
section: But before you come to that, observe what privilege the Common Law giveth
to

to the land holden by Knights service, viz. that it shall not be dismembered, but the whole dower taken of the lands holden in Socage, and the reason is, for that Knights service is for the defence of the Realm, which is pro bono publico, and therefore to be favoured.

† Ante 37.a.

Sect. 49.

Et nota que apres tiel judg-
ment done, la femme puit pren-
der les vicnes, & en lour pre-
senç endower luy mesme p metes
& Bonds, de la pluis beale part
de les tenementis que el ad cōe gat.
dein en Socage, daū & tener a
luy pur terme de sa vie, & tiel
Dower est appelle Dower de la pluis
beale.

And the Judgment, viz. Tenend' noī'e dotis, probeth, that she may have it for term of life, for every Dower is for term of life.

And note, That after such a Judgment given, the wife may take her Neighbours, and in their presence endow her self by Metes and Bonds, of the fairest part of the Tenements which she hath as Gaine in Socage, to have and to hold to her for term of her life; and this Dower is called *Dower de la pluis beale*.

Sect. 50.

25. E. 3. Dower 69.
16 E. 3. tit. Waſt. 100.
† 1 Rot. 681.

Bract. II. 5. 329. F. N. B. 78.

Lou le Judge-
ment est fait,
&c., for without such a
Judgment, as appeareth be-
fore, Gardein in Socage can-
not endow her self, as like-
wise hath been said before.

On en auter court.
That is by Writ of Right of
Dower in the Court of the
heir, if he have any, or of the
Lord of whom the land is hold-

Et ceo est pur sal-
vation del estate del gardein en Chivalrie, durant le nonage de l'enfant
For the heir (before the entrie of the Gardein) cannot plead the same Plea, that the De-
fendant should endow her self de la pluis beale. And the reason of this Dower de la pluis beale
be all of the Socage land, was for advancement of Chivalrie for the defence of the Realm.

Et nota, q tiel
Dowment, ne
puit este, mes lou te
judgment est fait en le
Court le Roy, ou en
auter Court, &c. & ceo
est pur salvation del
estate del Gardeine
in Chivalrie durant
le nonage le En-
fant.

And note, that such a
dowment cannot
be but where judge-
ment is given in the
Kings Court or in some
other Court, &c. and
this is for the preser-
vation of the estate of
the gardein in Chival-
rie, during the nonage
of the Infant.

Et ilint·poyes veſter cin-
que manners de Dower,
s, Dower per le common Ley,
Dower per le custome, Dower
ad ostium Ecclesiaz, Dower ex af-
fensu patris, & Dower de la pluis
beale.

And so you may see five kin-
of Dower, viz. Dow-
by the Common Law, Dow-
by the Custom, Dower *ad os-
tum Ecclesiae*, Dower *ex affen-
tis patris*, and Dower *de la pluis
beale*.

Sect. 51.

Sect. 52.

E memorandum que en chescun ale lou home prent me seisie de tiel estate de tenements, &c. s'int que l'issue que il per son feme poit possibilite inheriter mesmes les tenements de tiel estate de la feme ad comeire al feme, en tiel le apres le mort la me il avera mesmes tenements per curtesie de Angleterre, & autrement nemy.

Come heire al feme. This doth imply (b) a secret of Law, for except the wife be (b) Lib. 8. fo. 34. in Paines Case. nally seised, the heir shall not (as hath been said) make himself heire to the wife : and this be reason that a man shall not be Tenant by the curtesie of a seisin in Law. ^{+ Ante 29.a.}

Sect. 53.

E aussi en cheseun case le feme prent Baron seisie d' tiel estate tenements, &c. ut q si p possibilite il puissait happen q si le feme avoit un issue p sa baron que m l'issue puissait per possibilite enheriter mesmes les tenements de tiel estate que le baron ad, ne heire a l'baron, tiels tenements et la dower & au- ment nemy. Cur

And also in every case where a woman taketh a husband seised of such an estate in tenements, &c. so as by possibility it may happen that the wife may have issue by her husband, and that the same issue may by possibility inherit the same Tenements of such an estate as the husband hath, as heir to the Husband. Of such Tenements she shall have her dower, & otherwise not. For

M Emorandum, ^{seq. 234.301.335.} This word doth betoken some excellent point of learning, whitch our Author hath used in other places, as appeareth in the margent.

The matter hereof hath been partly explained in the chapter of Tenant by the curtesie. ^{+ Ante 29.b.}

If a man (a) taketh a wife seised of lands or tenements in fee, and hath issue, & after the wife is attainted of felony so as the issue cannot inherit to her, yet he shall be Tenant by the curtesie, in respect of the issue which he had before the felony, and which by possibility might then have inherited. But if the wife had been attainted of felony before the issue, albeit he hath issue afterward, he shall not be Tenant by the Curtesie.

(a) 21 E. 3. 9. 11 H. 7. 3 H. 7. 17. Stans. 195. 27 E. 3. 77. 36 E. 3. Pet. 10. 26 Ass. p. 2. 13 H. 4. 8. ^{+ Ante 35.a. 36.b.}

ISint que si per possibilite il puit happen que le feme avoit ascun issue per son Baron. Albeit the wife be ^{+ 1 Roll. 675.} a hundred years old, or that ^{12 H. 4. 2. 7 H. 6. 11. 12.} the husband at his death was but four or seven years old, so as she had no possibility to have issue by him, yet seeing the Law saith, That if the wife be above the age of nine years at the death of her husband, she shall be endowed, and the women in ancient times have had children at that age, wherunto no woman doth now attain, the Law cannot judge that impossible, which by nature was possible. And in my time, a woman above threescore years old hath had a child, and ideo non

non definitur iure. And soe
the husbands being of such
tender years, he hath habi-
tum, though he hath not po-
tentiam at that time, and
therefore his wife shall be
endowed.

C Et que mesme
lisse puissot per pos-
sibilitie inheriter mes-
mes les tenements,

&c. A man seised of land
in general tail, taketh wife,
and after is attainted of Fe-
lony before the said Stat.: E.6.
the issue should have inherit-
ed, and yet the wife should
not have been endowed: For
the statute of W.2. ca.1. relis-
beth the issue in tail, but not
the wife in that case. But at
this day, if the husband be
attainted of Felony, the wife
shall be endowed, and yet the
issue shall not inherit the
lands which the father had
in fee simple. If the wife
elope from her husband, &c.
she shall be barred of her Do-
wer, as hath been said, and
yet the Issue shall inherit.

‡ Ante 37.a. ‡ F.N.B.
b. 140.150. ‡ Ante 32.a
a: ‡ Finch.27.

si tenements sont dous if tenements be given
a un hōe & a les h̄es to a man, and to the
que il engendra de heirs which he shall be
corps la feme, en tel get of the body of his
case la feme nad riēs wife, in this case the
en les tenements, & wife hath nothing in
le Baron ad Estate the tenements, and the
orsque come Donee husband hath an estate
en special tail; un- but as donee in special
core si le Baron devy tail; yet if the husband
sans lisse, mesme la die without issue, the
feme sera endow de same wife shall be en-
mesmes les tenements, dowed of the same te-
pur ceo que lisse que nements, because the is-
el p possilitie puiss- sue which she by possi-
soit auer per mesme p bility might have had by
Baron puissot enhe- the same husband, might
riter mesmes les te- have in herited the same
nements. Mes si la tenements. But if the
feme deviast, vivant wife dieth, living her
sa Baron, & puis p husband & after the
Baron pris auter fe- the husband takes another
feme & moriast, sa secōd wife & dieth, his
feme ne sera my en- second wife shall not
dow en cest case, cau- endow'd in this case for
sa qua supra. the reason aforesaid.

Sect. 54.

¶ You may easily perceive by the context that this shaft came never out of Littletons 2d
ver of choice Arrows; and therefore I will leave it. Only for the Students sake I
refer them to 5 E.3. Voucher 249. 8 E.3.Aff.393. 4 H.6.24 F.N.B.149.

5 E.3. Voucher 249.
8 E.3.Aff.293.
4 H.6.24 F.N.B.149.

+ Ante 31.2.

CNcta si un home soit seisié
de certain terres & pris
un feme, & puis aliena mesme la
terre ove garrantie, & puis le fe-
offor, & le feoffee deviout, & le feme
de le feoffor port un action de do-
wer envers le issue le feoffee, & il
vouch l'herit le feoffor, & pendant
le vouchier & nient terminé, la
feme le feoffee port son action de
dower envers le heire le feoffee,
& demaunda la tferce part de c Dower against the heir of Feo-

Note if a man be seised of cer-
tain lands, and taketh wife
and after alieneth the same la-
with warranty, and after the Fe-
offor and Feoffee die, and the
of the Feoffor bring an Action
Dower against the Issue of the
feoffee, and he vouch the heir
the Feoffor, and hanging the
cher and undetermined, the
of the Feoffee brings her Action
Dower against the heir of Feo-

que la Baron fuit seisié, Feoffee, and demand the third part of he voile demaunder le that whereof her husband was seised, ce part del eux deur and will not demand the third part of ts de que la Baron fuit these two parts of which her husband ie, fuit adjudge, que el was seised. It was adjudged, that she vera Judgemenet tancz should have no Judgment until such time ter plee fuit determiné, as the other Plea were determined.

Sect. 55.

Et nota, que Vavisour dit, A Nd note, *Vavisor* faith, that if a man be seised of land and committeth felony, and after alieneth, and af- pnis est attaint, la ne avera bone acti- de Dower envers feoffee: Mes si soit herte al Roy, ou al eignoz, et n'aura ef de Dower, Et vide diversitatem, & re inde legem.

A Nd note, *Vavisor* faith, that if a man be seised of land and committeth felony, and after alieneth, and af- pnis est attaint, la ne avera bone acti- de Dower envers feoffee: Mes si soit herte al Roy, ou al eignoz, et n'aura ef de Dower, Et vide diversitatem, & re inde legem.

C **T**his is also of the new addition, & explosa est hac o- pinio, for it is clear in law that the wife at the common law should not have been endow'd against the feoffee. For to deter and restrain men from committing of Treason or Felony, the law hath inflicted five punishments upon him that is attainted of Treason or Felony. 1. He shall lose his life, and that by an infamous death of hanging between heaven and the earth, as unworthy in respect of his offence of either. 2. His wife that is a part of himself, (Et erunt animæ duæ in carne una) shall lose her Dower. 3. His blood is corrupted, and his children cannot be heirs to

Vide Sect. 749.
Vide Britton, ca 109. l. i.
Bracton tit. evidens, 1. 4.
fol. 397, 30, 311.
Stanf. pl. car. 194, 195.
Post. 392, b.

Britton fol. 15. cap. 5. 3.

and if he be noble or gentle before he and all his posterity are by this attaint made ignoble. 4. He shall forfeit all his lands and tenements: And 5. all his goods and chattels; and Vide Sect. 746.

this is included by the law in the Judgment, Quod suspendatur per collum. But this is not intended of all Felonies, but of felony by stealing of goods above the value of 12 pence, and of Petit larceny under the value. So as the woman shall lose her Dower as well against feoffee as against the Lord by escheat. And so it was resolved in the writ of dower brought Mary Gates late wife of J. Gates, who after the coverture had infeoffed Wiseman in fee, and committed high Treason, and was thereof attainted, that the wife should not be endowed with the feoffee, and in that case it was resolved, that so it was at the common law in case of felony. And it is to be understood, that the wife shall not only lose her reasonable Dower at common law for the felony of her husband, but also her Dower ad ostium Ecclesiae, and ex suis patris for Felony done after the Dower assigned, and Dower by custom also. And the son of all this is yielded by Littleton himself in the Chapter of Warranties, Sect. 746. to the that men should be afraid to commit Felony. But at this day the wife of a man attainted felony (as often hath been said) shall be endowed by force of the Statutes in that case. pro- ed.

And it appeareth by Britton, Que femme de homicide ne regne nul dower de tenants que lour assigne per leur Barons, so as the wife of a felon attainted by the common Law was dis- ed to recover Dower ad ostium Ecclesiae, and ex assensu patris, as well as her reasonable dower which the Common Law gave her. See in Bracton many bars of Dower as the law then held.

[†] Dyer 140. [‡] 3 Inst. 216. [‡] 1 Leon. 3.
M 3 & 4 Ph. & Mar.
R. 760. in corn. banca.

¹ E. 3. 26. 12. H. 4. 30.
Bracton lib. 4. fol. 311.
[‡] Post. 392. b.

Vide Sect. 746.
Britton cap. de homicide
fol. 15.

Bracton lib. 4. fol. 308.
[&] Fleta ubi supra.

[&] Britton ubi supra.

Chap. 6. Sect. 56.

Tenant a terme de vie.

O u pur terme
de vie dun
auter home.

^a Cro. Jac. 200 s. 54.
Bract. lib. 2. ca. 5. 86 ca. 9.
fol. 26. Fleta lib. 3. ca. 12.
Britton fol. 83.
Bracton lib. 4. fol. 170.
Vide Sect. 381.

(a) Vid. le Dean de Wor-
cest. case, lib. 6. fo. 37.
27 Ass. p. 31. 30 E. 3. 1.
27 H. 6. Recogntance.
Statuta pl. ultima:
Post. 249. b.
38 H. 6. 26. Bracton lib. 2.
fol. 9. Brit. fol. 84. 85.
Vaugh. 190.

(b) 27 Ass. p. 31. &
Pl. com. fol. 28. b. in
Colthorpe case cit. B. rec
303.
2 Rol. 50. & 2 Cro. 201.
Mo. 394. & 3 Cro. 57.
Mo. 664. & 2 Cro. 282.
(c) Littleton 167.
11 H. 4. 42. 17 E. 3. 48.
39 E. 3. 25. 7 H. 4. 46.
8 H. 4. 15. Dyer 1 Eliz.
253.
2 Rol. 150. 151.
1 Rol. 844. & 1 Leon.
126. & Post. 239. a.
(d) Bract. lib. 4. fo. 222.
231. 232. & vid. fo. 136.
137.
Fleta lib. 4. ca. 19 25. 26.
27. 8 E. 3. 3. 54. 55. 21 E. 3.
42. 48 E. 3. 3. 7 E. 4. 28.
21 H. 6. 46. 50 E. 4. 3.
F. N. B. 180. lib. 4. 86. 87.
in Luttrell's case.
& 1 Co. 46.
Vide Sect. 381.

Roffe case. lib. 5. fol. 13.
& 5 Co. 9. b.

Tenant pur
terme de vie
est, lou home
lesa terres ou tene-
ments a un auter pur
terme de vie le lessee,
ou pur terme de vie
dun auter home, en
tel case le Lessee est
Tenant a terme de
vie. Mes per com-
mon parlance celuy
que tient pur terme de
sa vie demise, est
appel Tenant pur
terme de sa vie, &
cestuy que tient pur
terme d'autre vie, est
appel Tenant pur terme
d'autre vie.

his or her estate, and the Grantee dieth, there shall be an occupant. But against the King there shall be no occupant, because nullum tempus occurrit Regi. And therefore no man shall gain the King's land by priority of entry. There can be no occupant of any thing that lieth in grant, and that cannot pass without Deed, because every occupant must claim by a que estate, and also the life of Ce' que vie. It were (c) good to prevent the uncertainty of the estate of the occupant to add these words, [To have and to hold to him and his heirs during the life of Ce' que vie] and this shall prevent the occupant, and yet the Lessee may assign it to whom he will, unless he hath already an estate for another man's life without these words, then it were good for him to assign his estate to divers men and their heirs during the life of Ce' que vie.

Note, that (d) to every Tenant for life the law as incident to his estate without provision the party giveth him three kind of estovers, (that is) Housbore, which is twofold, viz. estoveria edificandi & ardendi Ploughbore, that is estoverium arandi. And lastly Haybore, and that estoverium claudendi. and these estovers must be reasonable, estoveria rationabilia. And these the lessee may take upon the land demised without any assignment, unless he be restrained by special covenant, for modus & convenientia vincunt legem. Bore in the Saxon tongue, and estovers in French in this case are all of one signification, that is, to have compensation or satisfaction for these purpôles. Estovers cometh of the French word estover. And the same estovers that Tenant for life may have, Tenant for years shall have.

You have perceived, that our Authors divides Tenant for life into two branches, viz. into Tenant for term of his own life, and into Tenant for term of another man's life: to this may be added a third, viz. into an estate both for term of his own life, and for the term of another man's life.

As if a lease be made to A. to have to him for term of his own life, and the lives of B. & C. for the lessee in this case hath but one freehold, which hath this limitation. During his own life, and during the lives of two others. And herein is a diversity to be observed between several estates in several degrees, and one estate with several limitations. For in the first, an estate for a man's own life is higher than for another man's life, but in the second it is not. As if A. be tenant for life, the remainder or reversion to B. for life, A. may surrender to

Tenant for term of life is, where a man letteth lands or tenements to another for term of the life of the Lessee, or for term of the life of another man. In this case the Lessee is Tenant for term of life. But by common speech he which holdeth for term of his own life, is called Tenant for term of his life, & he which holdeth for term of another's life, is called Tenant for term of another's life.

the Estate of B. for term of his own life is higher than an Estate for another mans life : ^{# Post. 273.b.}
and therefore if tenant for life infeoff him in the remainder for life, this is a surrender, and ^{24 E. 1. 32, & 68. 30 Ass.}
for forfeiture. And albeit an Estate for term of a mans own life be but one freehold, yet may
several freeholds in certain cases be derived out of the same, whereof our books are very plen-
tiful, and wherewith you may dispose your selves for a time. As if tenant for life maketh a
lease by Deed, or without Deed, to him in the remainder, or reversion, in tail or in fee, for the ^{# 1 Co. 76. # 5 Co. 76.}
term of the life of him in the remainder or reversion, and after he in the remainder taketh ^{13 R. 2. Dower 95. 7 H. 6.}
life and death, his wife shall not be endowed, for tenant for life shall enjoy the land again, for ^{3. per Cur. 18 E. 3. 48.}
feiture it cannot be, for he in the remainder was party, and surrender it cannot be, for that ^{# Post. 252.a. 335.a.}
whole Estate was not given.

The heir maketh a lease for life, reserving a Rent, against whom the wife recovereth her
w^r and d^t, the Lessee shall have the land again for life, and the Rent is rebated.

So it is, if Tenant for life take husband and by Deed indented they make a lease to him
the Reversion for the life of the husband, reserving a Rent, this is neither forfeiture, nor
solute surrender, for the cause aforesaid, and the reservation is good.

B. seised of lands in fee, taketh to wife A. and infeoffs C. in fee, who takes Alice to wife : C. ^{# 1 Co. 76.}
Alice is endowed ; B. d^t, A. recovereth Dower against Alice and d^t, Alice shall en- ^{(a) 2 H. 5. 7. 13 H. 7. 15.}
the land again during her life. ^{18 E. 2. Br. 835. F. N. B.}

A. and (a) B. joint tenants, A. for life, and B. for fee, joyn in a lease for life, A. hath a Re= ^{27 H. 8. 13. 13 H. 7. 15.}
son, and shall joyn in an Action of waste. ^{22 H. 6. 24. 17 E. 3. 9. b.}

Tenant for (b) life, and he in the Reversion joyn in a lease for life, it is said, that they shall
in an Action of waste, and that the Lessee for life shall recover the place wasted, and he in
reversion damages.

If a man grant (c) an estate to a woman dum sola fuit, or durante viduitate, or quam diu se bene ^{# Plow. 23.}
serit, or to a man and a woman during the coverture, or as long as the Grantee dwell in such ^{(c) 37 H. 6. 27. 26 E. 3. 69.}
house, or so long as he pay 10 l. &c. or until the Grantee be promoted to a Benefice, or for any ^{14 E. 2. Grant 92. 3 E. 3.}
incertain time, which time as Bracton saith, is tempus indeterminatum : In all these cases ^{15. 14 H. 8. 13.}
it be of lands or tenements, the Lessee hath in Judgment of law an estate for life determina- ^{Bracton lib. 6. fo. 207.}
ble, if liberty be made ; and if it be of Rents, Apywolsons, or any other thing that lie in ^{Fleta lib. 3. ca. 12.}
int, he hath a like estate for life by the delivery of the Deed, and in count or pleading he shall
edge the lease, and conclude, that by force thereof he was seised generally for term of his life.

If a man make a lease of a Mannor, that at the time of the lease made is worth 20l. per an.
other until 100 l. be paid, in this case because the annual profits of the Mannor are incer- ^{# 1 R. 845.}
taint, he hath an estate for life, if liberty be made determinable upon the levying of the 100l. But ^{# Sid. 146. # 6 Co. 35.b.}
man grant a Rent of 20l. per an. until 100l. be paid, there he hath an estate for five years, ^{33 Ass. p. 2.}

there it is certain, and depends upon no incertainty. And yet in some cases a man shall have ^{# Post. 205.a.b.}
incertain interest in lands or tenements, and yet neither an estate for life, for years, or at Lib. 5. f. 9. Mannings case. ^{# Plow. 273. # 1 R. 845.}
11. Is if a man by his will in writing, devise his lands to his Executors for payment of ^{3 H. 7. 13. 27 H. 8. 5.}
debts, and until his debts be paid ; In this case the Executors have but a chattel, and an ^{14 H. 8. 13. 21 Ass. p. 8.}
certaint interest in the land until his debts be paid ; for if they should have it for their libes, ^{# Sid. 344. 224. 262.}
by their death their estate should cease, and the debts unpaid, but being a chattel, it shall ^{# 10 Co. 46. # 8 Co. 9.}
to the Executors of Executors for the payment of his debts : And so note a diversity be- ^{# Post. 43. b. 213. 2.}

tween a devise and a conveyance at the Common law, in his life time. And tenant by Statute
Merchant, by Statute Staple, and by Elegit, have incertain interests in lands or tenements,
yet they have chattels, and no freehold, whose estates are created by divers Acts of Parlia-
ment, whereof more shall be said hereafter. And so have Guardians in chivalry which hold o-
nly one grant lands or tenements, Reversions, Remainders, Rents, Apywolsons, Commons
like, and express or limit no estate, the Lessee or Grantee (due ceremonies requisite by law
performed) have an estate for life. The same law is of a declaration of a Use. A man ^{# 1 R. 845. 860.}
have an estate for term of life determinable at will ; As if the King doth grant an Office ^{Vid. sect. 381. 7 Ass. 1.}
one at will, and grant a Rent to him for the exercise of his Office for term of his life, this ^{13 El. Dyer 300.}

determinable upon the determination of the Office. ^{7 E. 4. 23.}
Tenant in fee simple made a lease of lands to B. to have and to hold to B. for term of life, ^{# 8 Co. 85. # Post. 233.a.}
without mentioning for whose life it shall be, it shall be deemed for term of the life of the Lessee ^{# 1 R. 846.}
it shall be taken most strongly against the Lessor, and as hath been said, an estate for a mans ^{Vide sect. 381.}
life is higher than for the life of another. But if tenant in tail make such a lease without
mentioning for whose life, this shall be taken but for the life of the Lessor, for two Reasons.

first, when the construction of any act is left to the law, the law which abhorret injury ^{# Post. 47 # Post. 183.}
wrong will never so construe it, as it shall work a wrong : And in this case, if by constru- ^{314. nota.}
tion it should be for the life of the Lessee, then should the State tail be discontinued, and a new ^{# 2 R. 200. # 8 Co. 55.}
version granted by wrong : But if it be construed for the life of the tenant in tail, then no
wrong is wrought. And it is a general Rule, that whenever the words of a Deed, or of the
parties,

8 Co. 56. 39 a.
4 E. 2. Wast. 11. 17 E. 3. 7.
† Post. 314. a.
‡ Moot 358. 363.
‡ 1 Co. 128. † Post 276. a

parties without Deed may have a double intendment, and the one standeth with Law and right, and the other is wrongful and against law, the intendment that standeth with law shall be taken.

Secondly, the law more respecteth a lesser estate by right, than a larger estate by wrong, as if a tenant for life in remainder dislise tenant for life, now he hath a fee simple, but if Tenant for life die, now is his wrongful estate in fee by Judgment in law changed to a rightful estate for life.

† Post. 47. a. † F.N.B.
169. h.
19 H. 6. 7 H. 4. 32.
6 E. 13. 17. 7 E. 3. 66.
18 E. 3. 60. 23 E. 3. c. 1. &c
11 H. 4. 46. 38 E. 3. 23. 24.
† Hutton, 12 b.

If a man retain a servant generally without expressing any time, the law shall construe it to be of one year, for that retainer is according to law. Vid. 23 E. 3. cap. 21, &c. To shut up this point it hath been adjudged, that where Tenant in tail made a lease to another for term of life generally, and after released to the lessee and his heirs, albeit between the Tenant in tail, and him a fee simple passed, yet after the death of the lessee, the entry of the issue in tail was lawful, which could not be, if it had been a lease for the life of the lessee, for then by the release it had been a discontinuance executed. But let us now return to Littleton.

Sect. 57.

This and the rest that follow in this chapter concerning the description of feoffor and feoffee, Donor and Donee, and Lessor and Lessee are evident.

Et est ascavoir que il y ad le Feoffor, & le Feoffee, &c. Vide fol. 2. where a light touch is given who may purchase, now somewhat is to be said, who have ability to enfeoff, &c. and may be a Feoffor, donor, lessor, &c. whosoever is disabled by the common law to take, is disabled to enfeoff, &c. But many that have capacity to take, have no ability to enfeoff, &c. As men attainted of Treason, Felony, or of a Præmunire, Aliens born, the Kings Villains, Traitors, Felons, &c. he that hath offended against the Statutes of Præmunire, after the offences committed if Detainers ensue, Ideots madmen, a man deaf, dumb, and blind from his Nativity, a Feme Cobert, an Infant, a man by Dures; for the Feoffments, &c. of these may be avoided. But an Heretick, 2 H. 5. ca 7. which is repealed. Doct & Stud. lib. though he be convicted of Heresie, a leper removed by the Kings writ from the society of men, bastards, a man deaf, dumb, or blind, so that he hath understanding and sound memory, albeit he express his Intention by Signs, willian of a common

Bra. lib. 5. fol. 415.
Britton fo. 88. Fleta li. 3.
ca. 3. & lib. 6. ca. 39. 45.

* Ante 3. b. 8. 6.

2 H. 5. ca 7. which is repealed. Doct & Stud. lib. 2. cap. 29.

Et est ascavoir que il y ad le Feoffor & le Feoffee, Donor & le Donee, le Lessor & le lessee. Le Feoffor est proprement lou home enfeoffa un autre en ascuns terres ou tenements en fee simple, celuy que fist le feoffement est appell feoffour, & celuy a que le feoffement est fait, est appell feoffee. Et le donour est proprement lou un home done certaine terres ou tenements a un autre en le taile, celuy que fist le done est appell le donor, & celuy a que le done est fait, est appell le Donee. Et le lessor est proprement lou un home lessa a un autre certain terres ou tenements pur terme de vie, ou pur terme des ans, ou a tenir a volunt: celuy que fist le less est appell les.

And it is to be understood, that there is Feoffor and Feoffee, Donor and Donee, Lessor and Lessee. Feoffor is properly where a man enfeoffs another in any Lands or Tenements in Fee simple, he which maketh the Feoffment is called the Feoffor, and he to whom the Feoffment is made, is called the Feoffee. And the Donor is properly where a man giveth certain lands or tenements to another in tail, he which maketh the gift, is called the donor, & he to whom the gift is made, is called the Donee. And the Lessor is properly where a man letteth another lands or tenements for term of life or for term of years or to hold at will. He which maketh the lease is called Lessor.

or & celuy a que le and he to whom the Leas est fait, est ap- Lease is made, is cal- led Lessee. Et chel- sun que ad estate en one which hath an esun terres ou tene- ments pur terme de Tenements for term a vie ou pur terme de mans life, is called auer vie, est appell Tenant of freehold, and none other of a lesser estate can have a Freehold, but they of a greater Estate have a Freehold; For he in Fee simple hath a freehold, and Tenant in tail hath a Freehold, &c.

person before entry, or the like may infeoff, &c.

(a) All feoffments, gifts, grants, and Leases by Wi- shops, albeit they be confirm=

ed by the Dean and Chapter, by any of the Colledges or Halls in either of the Uni- versities, or elsewhere, Deans and Chapters, master or gar- diaan of any Hospital, Par- son, Vicar, or any other ha- bing Spiritual or Ecclesia- stical living, are also to be avoide,

(a) 32 H.8 cap.28. 1 El. not printed. 13 El.ca.10. 14 El.ca.11, 18 El.ca.20. Ja.ca.

(b) Lib.4.f.76.120.lib.5. fo.6.14 li.6.fo.37.li.11. fo.67.Madalen Colleg- case. Vide Lest. de W 2. ca.41.

(c) Magna Carta cap. 32. Mirror cap.5. sect.2. Glanvil lib.7.cap.1. Bract.lib.1.cap.88,&c. Fleta lib.3.cap.3.

(d) Vide an excellent declaration hereof Inte- adjudicat. coram Rege. T.1 E. 1. fol. 2. In Thes. Nott. & Derb.

(e) Bract.lib.1.10 H.7. fo.10 b.33 E.3.avowry 255. Stamf presol.29. 8 E.4.12.

+ F.N.B.10.c.14.d.
+ 6 Co. 1.
Mirror cap.3. sect.2.
Fleta lib.3.cap.3.

26 Ass.p.37. 20 Ass. p.17 25 E.3.avowry 126.

34 E.3 c.15. Vid. Stamf.

29.30. Matt. Paris.

Walsingham 37,39.

Vid 5 H.3. Mordanc. 53, Magna Carta there vouch'd, which was the Charter of King John,

for it was cited before

9 H.3.

+ 1 Roll.728.

+ Plow.212. 213.242.6.

245. nota.

posset sufficienter fieri domino feodi servitium ei debitum quod pertinet ad feodium illud. Upon whiche Itt I have heard great question(d) made, whether the feoffment made against that Sta- tute were voidable or no, and some have said that the Statute intended not to avoid the feoff- ment, but implicite to direct the tenure, viz. that the tenant should not infeoff another of parcel to hold of the chief Lord (that is, of the next Lord) but to hold of himself, and then the Lord may distrain in every part for his whole service without any prejudice unto him. But his opinion is against (e) the authority of our books, and against the said Statute of Magna Charta. For first it is agreed in 10 H.7. that as well before the Statutes as after, a tenant which held two acres might have aliened one of the Acres to hold of him, and notwithstanding the Lord might have distrained in which of the acres, he would for his whole services: and rea- son teacheth that before that Statute a tenant could not have aliened parcel to hold of the chief Lord; For the Heigniory of the Lord was entire, for the which the Lord might di- strain in the whole or in any part, and which the Tenant by his own act cannot divide to the prejudice of the Lord to bar him to distrain in any part for his Services, as he should do, if he should enfeoff another of parcel to hold of the chief Lord. But the Tenant might have made a Feoffment of the whole to hold of the chief Lord, for there no prejudice ensued to the Lord. Others have said, and they said truly, that the intention of the Statute was, that the Tenant could not alien parcel (which might turn to the prejudice of the Lord) without his assent, and this appeareth clearly by the Mirror. And by this Statute the King took benefit to have a fine for his licence, before which Statute no fine for alienation was due to the King. For it is (f) adjudged, that for an alienation in the time of Henry the second, no fine was due; and it appeareth in our Books, that if an alienation had been made before 20 H. 3. no fine was due to the King for alienation: now it is to be observed; that oftentimes for better understanding of our Books, the advised Reader must take light from History and Chronicles, especially for distinction of times. And therefore Matthew Paris, who in his Thro- de reciteth Magna Charta) testifieth that King Henry the third by evil counsels (and espe- cially, as the truth was of Hubert de Burgo then chief Justice) sought to avoid the great charter first granted by his father King John, and afterward granted and confirmed by him self in the ninth of Henry the third, for that as he said King John did grant it by Dures, and that he himself was within age when he granted and confirmed it. But forasmuch as after- wards the said King Henry the third in the twentieth year of his Reign, at what time he was nine and twenty years old, did grant and confirm the said great Charter, for that cause put out all scruples in the twentieth year of Henry the third named, albeit in law the Kings charter granted in the ninth year of Henry third, was of force and validity notwithstanding his nonage, for that, in judgment of law the King, as King, cannot be said to be a Mi-

nor

Lib. I. Cap. VII. Of Tenant for years. Sect. 58.

nor, for when the Royal Body Politick of the King doth meet with the natural capacity in one person, the whole Body shall have the quality of the Royal Politick, which is the greatest and moxe worthy; and wherein is no minority. For, Omne majus trahit ad se quod est minus. And it is to be observed, that no Record can be found, that either a licence of alienation was sued or pardon for alienation was obtained for an alienation without licence at any time before the 20th year of Henry the third, and it is holden in the 20th of Edward the third that a licence for alienation grew by this Statute.

Now in the case of a common person it was the common opinion, that if the tenant had aliened any parcel contrary to the said Act, that he himself was bound by his own act, but that his heir might have avoided it; and in the Kings case many held the same opinion. In Britton saith, Ne Countes, ne Barons, ne Chivaler, ne Serjeants, que teignont en chiese de nous ne purr' my dismember nous fees fauns licence: que nous ne puissent per droit engettre les purchasen, &c. And herewith agreeeth Fleta, and our Books. But now by the Statute i E. 3. cap. 12. & 34. L. 3. cap. 15. although the Kings tenant in chief or by grand Heriancy do alien all or any part without licence, yet there is not any forfeiture of the same, but a reasonable fine therefore to be paid. And note, it appeareth by the preamble in i E. 3. that complaint was made that land holden of the King in Capite, being aliened without licence was seized as forfeited. And in the case of a common person, the Statute of 18 E. 1. De quia emptores terrarum hath made it clear, for this hath in effect as to the common persons taken away the said Statute of Magna Charta c. 32. for thereby it is provided, Quod licet unicuique libero homini terras suas seu tenementa sua, seu partem inde ad voluntarem suam vendere, ita quod feoffatus teneat, &c. de Capitali Domino. In herein are divers notable points to be observed. First, that this word licet proberb that the tenant could not, or at least wates was endanger to alien parcel of his Tenancy, &c. upon the said Act of Magna Charta. Secondly, that upon the feoffment of the whole, the tenant shall hold of the chief Lord. Thirdly, that the tenant might enfeoff one of part to hold pro particula of the chief Lord. But this Act (the King being not named) doth not take away the Kings fine due to him by the Statute of Magna Charta.

Franktenement. Here it appeareth that Tenant in fee, Tenant in tail, and Tenant for life, are said to have a franktenement, a freehold, so called, because it doth distinguish from terms of years. Chattels upon uncertain interests, lands in Villenage or Customary, or Copthold lands. Liberum autem tenementum dicitur ad differentiam Villenagii, & villanorum qui tenent villenagium quia non habent actionem nec assisam, &c. item quod sit suum & non alienum hoc est si teneat nomine alieno ut firmarius ad terminum vel sicut creditor ad vadum. And now that tenant by Statute Merchant, Statute Staple, or Elegit, are said to hold land ut liberum tenementum until their debt be paid, and yet in troth they (as hath been said) have no freehold but a chattel, which shall go to the Executors, and the Executors also if they be ousted shall have an Assise. But (ut) is similitudinary, because they shall by the Statutes have an Assise a tenant of the freehold shall have, and to that respect hath a similitude of a freehold, but Nullum simile est idem.

Chap. 7. Sect. 58.

Tenant for terms of years.

(a) *Mirror cap. 2. sect. 17.*
Bracton lib. 2. cap. 26. &
lib. 4. fol. 220. Fleta lib. 3.
cap. 12. & lib. 6. cap. 34.
(b) For the word (dimittit)
see Sect. 531.

L On home lessa terres, &c.

Lessa and Lease is (a) derived of the Saxon word leapum, or leafum, for that the Lessee cometh in by lawful means (b), and dimittit is in French laysser, to depart with or forgo.

When Littleton wrote, many persons might make Lease for years, or for life, or

Tenant pur terme dans est lou hōe

lessa terres ou tene- ments a un autre pur terme de certaine ans solonque le number des ans que est ac- cordé perenter le let-

Tenant for term of years is where a man letteth lands or tenements to another for term of certain years after the number of years that is agreed between th

et le lessor. Et Lessor and the Lessee, quant le lessor entrer and when the Lessee force del leas, entreteth by force of the que il est tenant Lease, then is he tenant for term of years, si le lessor en tel se reserve a lui un such case reserve to nual rent sur tel him a yearly Rent up- il poit essier a on such lease, he may traint pur le rent chuse for to distrain les tenements les- for the Rent in the tem- s, ou il poit aver un nements letten, or else ion de debt pur les he may have an Acti- rearages envers le on of debt for the ar- see. Mes en tel rearages against the il covient que le Lessee. But in such tout soit seisie de case it behoveth that esmes les tenements the Lessor be seized in temps del leas, car est bone plee pur le see adire, que le lessor naboit riens en les tenements al temps le leas sinon que le as soit fait per fait dent, en quel case el plee donc ne st en le bouch le lessor pleder.

shes at their will and pleasure, which now cannot make them firm in law. And some persons may now make leases for years, or for life or lives (observing due indentures) firm and good in law, who of themselves could not so do when Littleton wrote, and this by force of divers Acts of Parliament (c) as namely 32 H.8. 1 Eliz. 13 Eliz. (e) 32 H.8. ca 28. 1 Eliz. 18 Eliz. and 1 Jac. Regis, of which Statutes one is enabling, and the rest are disabiling. When Littleton wrote, Bishops with the confirmation of the Dean and Chap. Master and Fellows of any Colledg, Deans and Chaplers, Master or Guardian of any Hospital, and his Brethren, Parson or Vicar, with the consent of the Patron and Ordinary, Archdeacon, Prebend, or any other body Politick, Spiritual and Ecclesiastical (Concurrentibus hiis quae in jure requiruntur) might have made leases for lives or years without limitation or stint. And so might they have made gifts in tail, or estates in fee at their will and pleasure, whereupon not only great decay of Divine service, but Dilapidations, and other inconveniences ensued, and therefore they were disabled and restrained by the said Acts of 1 Eliz. 13 Eliz. and 3 Jac. Regis, to make any estate or conveyance to the restraint or disability, leases for life or one and twenty years; with such reservation of Rent, and with such other provis- and limitation as hereafter shall appear. Also they may make grants of ancient Offices necessity with ancient fees, Concurrentibus hiis quae in requiruntur, for those grants are within the Statute of 32 H.8 but by construction, they are not restrained by the Statutes of Eliz. or 13 Eliz. because these ancient offices be of necessity, and with the ancient fees, and no diminution of revenue.

There be three kinds of persons that at this day make leases for three lives, &c. in such as hereafter is expressed, which could not so do when Littleton wrote, viz. First, any person sed of an estate tail in his own right. Secondly, any person seized of an estate in fee simple in the right of his Church. Thirdly, any husband and wife seized of any estate of inheritance in fee simple or fee tail in the right of his wife, or jointly with his wife before the marriage, the Bishop, &c. by Deed to bind his issues in tail, but not the reversion or remainder, the Deed without the Dean and Chapter to bind his successors, the husband and wife by Deed to bind the wife and her and their heirs, and these are made good by Statute of 32 H.8. which enableth them thereunto. But to the making good of such leases the said Statute, there are nine things necessarily to be observed belonging to them all, and the other to some of them in particular.

First, The Lease must be made Deed indented, and not by Deed Poll, or by Parol.

Secondly, It must be made to begin from the day of the making thereof, or from the making thereof.

Thirdly,

Lib. 5. fol. 14. case de Ecclasiastical persons

Lib. 11. fol. 66. Magdalen Colledge case.

Levesque de Sarums case

Lib. 10. fol. 60 61.

Lib. 5. fol. 14. case de Ecclasiastical persons

Lib. 11. fol. 66. Magdalen Colledge case.

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Lib. 5. fol. 14. case de Ecclasiastical persons

Lib. 11. fol. 66. Magdalen Colledge case.

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