

Sect. 134.

Esmeue le
manner est, ou
res ou tenements
ont grant en anci-
t temps a un Deane
Chapter, & a lour
cessors, ou a un
erson dun Eglis, &
les successors, ou a
un autre hōe de lait
glis, & a ses succe-
s en frankalmoigne
avoit capacity dap-
ndē tielz grāts ou
ffments, &c.

IN the same manner
it is where Lands or
tenements were grant-
ed in ancient time to
a Dean and Chapter,
and to their Success-
ors, or to a Parson of
a Church and his suc-
cessors, or to any other
man of Holy Church,
and to his successors
in Frankalmoigne, if he
had capacity to take
such graunts or feoff-
ments, &c.

Elericorum congregatio sub uno Decano in Ecclesia Cathedrali. And Chapters be twofold, viz. ^{# F.N.B. 230.2.} ancient, and the Later. And the later be also of two sorts, stt, those which were translated
founded by King Henry the eighth, in place of Abbots and Cobents, or Prioris and Cobents,
th were Chapters whiles they stood, and these are new Chapters to old Bishopricks. Se-
ly, where the Bishoprick was newly founded by Henry the eighth (as Chester Bristol, &c.)
the Chapters are also new. There is a great diversitē between the comingis in of the
ancient, and of the new. For the ancient come in, in much like sort as Bishops do, for
are chosen by the Chapter, by a Conge de eslier, as Bishops be, and the King giving his
al assent, they are confirmed by the Bishop. But they which are either newly translated,
founded, are Donative, and by the Kings Letters Patents are installed, which are mat-
teriall necessary to be known.

Sil avoit capacicie a prender. For Ecclesiastical persons have not capacity to take
cession, unless they be bodies politique, as Bishops, Arch-deacons, Deans, Parsons,
rs. &c. or lawfully incorporate by the Kings Letters Patents, or prescription, as Deans
Chapters, Colleges, &c. But a College of Religious Persons, Chauntry priests, and
like, that are not lawfully incorporated, but only consist in vulgar reputation, have no
city to take in succession, therefore Littleton added materially (sil ad capacicie a prender.) ^{# 10 Co. 5.}

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Cet liels que tēg-
lont en frank-
almoigne sont oblige
droit devant dieu
fair orisons, pray-
mess, & autres di-
services pur les
es de lour gran-
ou feoff. & pur les
es de lour heires

And they which
hold in Frankal-
moigne, are bound of
right before God, to
make Orisons, Pray-
ers, Masses, and other
divine services for the
souls of their grantor
or feoffor, and for the
souls of their heirs

En meigne le Min-
ner, &c. Here ^{19 Co. 122.}
Littleton habling put an ex-
ample of bodies incorporate
aggregate of many whereof
the head is only capable, now
putteth examples both of bo-
dies incorporate, aggregate of
many (all being capable) and
of sole Corporations of secular
persons.

Deane. Decanus is ^{# 3 Co. 72.}
derived of the Greek word
deka that signifieth Ten, for
that he is an Ecclesiastical se-
cular Goverour, and was
anciently over ten Prebends,
or Canons at the least in a
Cathedral Church, and is head
of his Chapter.

Chapter. Capitulum
And Chapters be twofold, viz. ^{# F.N.B. 230.2.}

Some be spiritual, and some be
temporal. And of spiritual
some be uncertain, as tenures
in Frankalmoigne, and some
be certain, as tenures by di-
vine Service. Again, divine
service certain is twofold, ei-
ther spiritual, as Prayers to
God, or temporal, as distri-
bution of Alms to poor peo-
ple.

Ob-

(1) Co 22

I Oblige de droit. That is they are compellable by the Ecclesiastical Law to do it, and therefore it is said that they are bound of right, (for want of remedy, & want of right is all one) and the Common Law (as here it appears b) taketh knowledge of the Ecclesiastical Law in that behalf.

I De faire Orisons, Prayers, Messes, & autres Divine Services.

Since Littleton wrote, the Liturgy or Book of Common Prayer and of Celebrating Divine Service is altered; this alteration notwithstanding, yet the tenure in Frankalmoign remaineth, and such Prayers and Divine Service shall be said and celebrated, as now is authorized, yea, though the tenure be in particular, as Littleton (a) hereafter saith, viz. A Chaunter un Messe, &c ou a Chaunter un placebo & dirige, yet if the tenant saith the Prayers now authorised, it sufficeth.

And as Littleton (b) hath said before the case of Hocage, the changing of one kind of temporal services into other temporal services altereth neither the name nor the effect of the Tenure: so the changing of spiritual services into other spiritual services, altereth neither the name nor effect of the Tenure: And also Tenure in Frankalmoigne is now reduced to a certainty contained in the Book of Common Prayer, yet seeing the Original Tenure was in Frankalmoigne, and the change is by general consent by authority of Parliament, (c) whereunto every man is party, the Tenure mains as it was before.

I Ne feront aucun feultie. Herein Tenant in Frankalmoigne differeth from Tenant in Frankmariage, for Tenant in Frankmariage shall do fealty, as hath been said the Chapter of Fee tail, but Tenant in Frankalmoigne, shall not do any, or any other thing but devora animarum suffragia.

(b) 33 H.6.6.23.E.1 tit. (c) 2 E.6.c.1.5. & 6 E.6. Que Frankalmoigne est le plus haute service, and this was confessed by the heathen per-

— — — — —
fuit hic sapientia quondam
Publica privatis secernere, sacra profanis.

And certain it is, that Nunquam res humanæ prospere succedunt ubi negliguntur.

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I Le seignour ne poet eux distreiner pur cest non feulant, &c.

I Distreme. The ou faillont de faire teli

E si tiels que teignont leur tenements en Frankalmoigne ne voilont ou faillont de faire teli

A Nd if they who hold their Tenements in Frankalmoigne will not or fail to such divine service (i)

Of Frankalmoigne.

me service (cōe est is said) the Lord may
ne sūt ne poit eux not distract them for
rainer pur cel non not doing this, &c. be-
ant, &c. pur ceo que cause it is not put in
mis en certeine certainty what services
ur services ils doi- they ought to do : but
faire : mes l'st ceo poit complainie
lour Ordinary ou plain of this to their
tout, luy preyant Ordinary or Visitor,
il voiloit mitter praying him that he
nishment & correcti- will lay some punish-
on ceo, & auri de ment and correction for
pider q̄ tiel negli- this, and also provide
gence ne soit pluis a- that such negligence be
fait, &c. Et lordi- no more done, &c. And
ou visit de droit tour of right ought to
doit faire, &c.

heep depasturing within the Lords Manor ; and this is certain enough, albeit the Lord sometime a greater number and sometime a lesser number there, and yet this uncertainty is referred to the Manor which is certain, the Lord may distract for this uncertainty. Et similibus.

¶ Poet Complainier. That is, to complain in course of Justice, according to the Ecclesiastical Law

¶ A lour Ordinary. Ordinarius, and so he is called (g) in the Ecclesiastical Law Quia ordinariam jurisdictionem in jure proprio, & non per deputationem. The name we have an= (g) Mirror cap 5. Sect. ly taken from the Cannonists, and do apply it only to a Bishop, or any other that hath Br. & lib. 5. fol. 205. &c. jurisdiction in Causes Ecclesiastical. In this case of Littletons it is to be obser= Fleta 1.2.c. 50. & 55. & lib. 6. cap. 38. vated that the Law doth appoint every thing to be done by those unto whose office it pro= Britton fol. 69.70. & lib. 2. cap. 19. & Divine Service said, and to compel them to do it by Ecclesiastical censures, therefore 17 E 2 breve 822. Regist. 141. Linwood. plaint is to be made unto him. Here and in the next Section it appeareth, that for de= tit. de Constit. cap. ex. 1. & 2. & 400. & 401. and the jure, the one Ecclesiastical, limited to certain spiritual and particular cases, he one whereof our Author here speaketh:) and the Court wherein these causes are hand= other Authors above- ed by the common and general Law of the Realm, Quæ pertinet ad coronam & dignitatem + 9 Co. 39. & ad regnum in causis & placitis rerum temporalium in foro seculari. So as in this case put + 2 Inst. 398. & 4 Inst. our Author the Lord hath remedy for his Divine Service (albeit they issue out of temporal 335 : Plow. 277.a. Regist. orig. 187. & 27 F. 3. 84. 85. Regist. 40. F. N. B. 42. 10 Eliz. Dier 273. 16 E. 3. 3 breve 660. 21 E. 3. 60. 6 H. 7. 13. 8 A. 29 Brook. tit. Pr- munire 21. + 5 Co. 66.b. + 2 Co. 43. + Plow. 277.a.

¶ On Visitor. That is, where the King or any of his Progenitors is founder of the

there the Ordinary regularly shall not visit them, but the Chancellour of England is ap-

pointed by the Law to be Visitor of them ; or where a special Visitor is appointed upon the

ordination, the complaint must be made to that Visitor.

¶ De droit doit ceo faire. De Droit, of Right, (that is to say) he ought to do it by

Ecclesiastical Law, in the Right of his Office.

and here is implied a Maxim of the Common Law, that where the Right (as our Au- here speaketh) is spiritual, and the Remedy therefore only by the Ecclesiastical Law, the

sance thereof doth appertain to the Ecclesiastical Court.

word Distress is a French word : in Latine it is called districcio, angustia, because the cattle strained are put into a stright, which we call a pound.

¶ Pur ceo que nest ^{+ Ante 47.a.}
mise en certaine quenx ^{+ 5 Co. 72.}
services ils doient faire.

It is a Maxim in Law, that no distress can be taken for any services that are not put into certainty, (e) nor can be reduced to any certainty, for, 8 E. 3. 3. 66. Id certum est quod certuni redi potest, for (f) oportet quod (f) Br. & ton fol. 230. certa res deducatur in judicium: & 328.

and upon the Avowry Damages cannot be recovered for that which neither hath certainty, nor can be reduced to any certainty: any yet in some cases there may be a certainty in uncertainty, as a man may hold of his Lord to sheer all 7 E. 3. 3. 2. ^{+ Post. 142.a.} ^{+ 2 Rot. 48. + Hob 122.}

¶ Poet Complainier. That is, to complain in course of Justice, according to the Ecclesiastical Law

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I Per certaine Divine service destre fait, sicomme a chaunter un messe, &c. ou de distributer en Almoign, &c. Here be the two parts above mentioned of Divine Service, and for this Divine Service certain the Lord hath his remedy, as here it appears by our Author, in foro seculari: toz here it appears that if the Lord distrein for not doing of Divine Service which is certain, he shall upon his abowzy recover damages at the Common Law, that is, in the Kings Temporal Court, for the not doing of it. And if issue be taken upon the performance of the Divine Service, it shall be tried by a Jury of twelve men; because albeit the service be spiritual, yet the damages are temporal, and so is the Seignior also.

And here is implied another Maxim of the Law, that where the Common or Statute Law giveth remedy in Foro seculari, (whether the matter be Temporal or Spiritual) the Consulance of that cause belongeth to the Kings Temporal Courts only, unless the Jurisdiction of the Ecclesiastical Court be saved or allowed by the same Statute, to proceed according to the Ecclesiastical Laws.

I On de distributer en almoign al cent pourz homes. Here note, that the Alms and Weltef of Poor People being a work of charity is accounted in Law divine Service; for what herein is done to the Poor for Gods sake, is done to God himself.

I Poet distrein, &c. Here (&c.) includeth many

2 E.3.27.28.

† 5 Co.72.
† F.N.B.209.b.

38 H.9.26.27.

2 E.6.ca.13.vers. finem.
13 E.2.ca.5.11 H.7.ca.8.
1 El.ca.2. 13 El.c.1.
23 El.c.1.1 Jac.c.11.
& 12.
† 5 Co.5 8.a.† 4 Co.20.

I M Es si un Abbe ou Prior tient de son Seignior per certaine Divine Service en certaine destre fait, sicomme a chaunter un messe chescun venddie en le semaine pur les Almes, ut supra, ou chescun an a tel jour a chaunter placebo & dirige, &c. ou de tra ver un chapleine de chanter messe, &c. ou de distributer en almoigne al cest pourz homes cent deniers a tel jour: en tel case, si tel Divine Service ne soit fait, le Seignior poist distreiner, &c. pur ceo que le Divine Service est mise en certaine per lour Tenure, que le Abbe ou Prior devoit faire. Et en tel case le Seignior avera fealtie, &c. come il semble. Et tel Tenure nest passee dit Tenure en Frankalmoigne, mes est dit Tenure per Divine Service. Car en Tenure en Frankalmoigne nul mention est fait dascun maner de Service: car nul poet tener en frank-

B Ut if an Abbott or Prior holds of his Lord by a certain Divine Service in certain to be done, as to sing a Mass every Friday in the week for the Souls, *ut supra*, or very year at such a day to sing a *Placebo* & *dirige*, &c. or to find Chaplain to sing Mass &c. or to distribute in Alms to an hundred poor men an hundred pence at such day: in this case, such Divine Service be not done, the Lord may distrein, &c. because the Divine Service is put in certain by their Tenure, whid the Abbot or Prior ought to do. And this case the Lord shall have Fealty, &c. as it seemeth. And such Tenure shall not be said to be Tenure in Frankalmoigne, but is called Tenure by Divine Service. For in Tenure in Frankalmoigne no mention is made of any manner of Service: for none can hold in Frankalmoigne, if there expressed any manner of service.

sign, si soit expresse of certain Service that
au main d'etain ser. he ought to do, &c.
e q il doit faire, &c.

excellent things; as when
where & what may be distrat= ned: of all which there is a tast
given in their proper places.

¶ En tiel case le Seignior avera fealty, &c. come semble. For as it hath
said, Fealty is incident to every Tenure, saving the Tenure in Frankalmoigne, and
the Lord may distrain, there is fealty due. And Britton calleth this Tenure (by Di= Brit. fol. 164.)
service) Aumone, and not libera Eleemosyna. And saith he, Tenure en aumone est terre
nement que est done a aumone, dount aucun service est retenue al feoffor.
&c. And here [&c.] implieth Distress, Escheat, and the like.

¶ Et tiel Tenure nest passee dit Tenure en Frankalmoigne, mes est dit Te... 33 H 6. fol. 6.
per Divine service, &c. And therefore our old Books divided Spiritual Service
free Alms, (which was free from any limitation of certainty) and Alms, because the
ants were bound to certain divine Services.

¶ Sil soit expresse aucun maner de certeine service. This holdeth where the
inty is reserbed upon the original Grant. If lands were given to hold in libera Eleemosyna,
endo a rent, it seemeth the reservation of the Rent to be void, * because it is repugnant
contrary to the former Grant in libera Eleemosyna.
de Trin. 4 E. 3. and F.N.B. 231. f. That an Abbot or Prior that holdeth in Frankalmoigne
not be charged with a Corody. Also lands holden in Frankalmoigne cannot (1) be an= Demesn, in respect of charges thereunto.

¶ Que il doit faire, &c. Here by [&c.] is understood temporal or spiritual Service,

which he ought to do corporally, or render, or pay.
There were within this Realm of England one hundred and eighteen Monasteries, founded
by Kings of England, whereof such Abbots and Priors as were founded to hold of the
per Baroniam, and were called to the Parliament by Writ, were Lords of Parliament,
had places and voices there. ¶ And of them there were twenty seven Abbots, and two Priors
as by the Rolls of Parliament appears. But since our Author wrote, all these (as hath
said) are dissolved. King Stephen did found the Abby of Faversham in Kent; Et dedit
ati, & Monachis, & successoribus suis, Manerium de Faversham in Com. Kanciae, simul cum (m) Canc. Pasch. 30 E. 1.
dredo, &c. tenendum per Baroniam, &c. Who albeit he held by Barony, yet because he was cor. Rege, this founda= tion is so pleaded.

All the Archbishops and Bishops of England have been founded by the Kings of England,
to hold of the King by Barony, (as before hath been said) and have been all called by writ

¶ Court of Parliament, and are Lords of Parliament: (as amongst many) take one
ble Record, (o) Mandatum est omnibus Episcopis, qui conventuri sunt apud Gloucestriam, die

ati in crastin' Sancte Katharinæ, firmiter inhibendo, quod sicut Baronias suas quas de Rege te= diligunt, nullo modo præsumant consilium tenere de aliquib' quæad Coronam Reg' pertinent, vel

personam Regis, vel statum suum, vel statum consilii sui contingunt; scituri pro certo, quod

terent, Rex inde se capiet ad Baronias suas. Teste Rege apud Hereford 23 Novemb. &c. And the
Bishoprics in Wales were founded by the Princes of Wales, and the Principality of

Wales was holden of the King of England as of his Crown: and when the Prince of Wales
committed Treason, Rebellion, &c. the Principality was forfeited, and the Patronages of

Bishops annexed to the Crown of England, so as the King is to have Pensions for his
plains, and Corodies for his Vadelets, of them, as of Bishops founded by himself. And

Mich. 10 H. 4. Rot. 60. Wallia coram Rege, that the judgment was given accordingly against
Bishop of St. Davids in Wales, per Justiciarios de utroq; Banco & alios de perito concilio

Regis. And the Bishops of Wales are also called by Writ to Parliament, and are
Lords of Parliament, as Bishops of England be.

* 2 Inst. 460.
13 E. 2. Count de
Vouch. 118.
* 13 H. 4. tit. M. sic 74:
30 E. 3. 30. 19 E. 2. avew-
ry 224 32 E. 1. Tail 31.
26 Ass. 66. 4 H 6. 17.
Trin. 4 E. 3. F. N. B. 231. f.
15 E. 3. Corody 4.
11 Ass. 22. 50 Ass. pl. 6.
(1) 32 E. 1. ant. Dem. 39.
8 E. 3. 5.

+ F. N. B. 232. a.
+ For example Rot. Parl.
5 H. 8. 21 H. 8. &c.

(m) Canc. Pasch. 30 E. 1.
cor. Rege, this founda= tion is so pleaded.
+ Post. 134. a. 344.
(o) Ex Rot. pat. de anno
18 E. 3. M. 17.
+ 9 Co. 73.
10 H. 4. fol. 6. b.

Sect. I 38.

¶ Tem, si soit de- mand, si ten en
marrage ferra fe. A lso, if it be de- manded, if tenant

B b

¶ E quel sera in- convenient, &c.
An argument drawn from
an inconvenience is forcible
in Law, as hath been obser= ved

Vid. Sect. 87. 139. 201.
269. 446. 478. 665 722.

40 Ass. 27.
4 Ante 23.

Littleton fol. 50 b.
42 E. 3.5.28 E. 3.395.
20 H.6.28.
39 Co. 122.

F.N.B. 151.

ved before, and shall be often hereafter. Nihil quod est inconveniens est licitum. And the law, that is the perfection of reason, cannot suffer anything that is inconvenient.

It is better, saith the Law, to suffer a mischefe that is particular to one, than an inconvenience that may prejudice many. See more of this after in this Chapter.

Note, the reason of this diversity between frankalmoign and frankmarriage standing upon the main maxim of Law, that there is no land that is not holden by some service spiritual or temporal: and therefore the Donee in frankmarriage shall do fealty, for otherwise he should do to his Lord no service at all; and yet it is frankmarriage, because the Law createth the service of Fealty for necessity of reason and avoiding of an inconvenience. But tenant in frankalmoign doth spiritual and divine Service which is within the said Maxim; and therefore the law will not cohort him to do any temporal service. See the next Section.

I Et enconter reason.
And this is another strong argument in Law, Nihil quod est contra rationem est licitum. For reason is the life of the Law, nay the Common law it self is nothing else but reason, which is to be understood, of an artificial perfection of reason, gotten by long study, observation, and experience, and not of every mans natural reason; for, Nemo nascitur artifex. And legal reason est summa ratio. And therefore if all the reason that is dispersed into so many several heads were united into one, yet could he not make such a Law as the Law of England is, because by many successions of ages it hath been fined and

refined by an infinite number of grave and learned men, and by long experience grown such a perfection for the government of this Realm, as the old Rule may be justly bereft of it, Neminem oportet esse sapientiorem legibus: No man (out of his own private regard) ought to be wiser than the Law, which is the perfection of Reason.

ses heires devant le quart degree passe, &c. il semble que cy; car il nest pas semble quant a cel entent a tenant en Frankalmoigne, pur ceo que tenant en Frankalmoigne ferra, p cause de son tenure, divine service pur son Seigneur, come devant est dit, & ceo il est charge a faire per la ley del Saint esglise; & pur ceo il est excuse & discharge de fealty: mes tenant en frankmarriage ne ferra pur son tenant tel service; & sil ne ferra fealty, donc il ne ferra a son Seignior aucun maner de service, ne spiritual ne temporal, le quel serroit inconvenient & encontre reason, que home sera tenant destate denheritance a un autre, & uncoze le Seigneur aveera nul maner de service de lui: & issint il semble que il ferra fealty a son Seignior devant le quart degree passe. Et quant il ad fait fealty, il ad fait touts ses services.

nor or his heir being the fourth degree past, &c. it seemes that he shall; for he not like as to this pose to tenant in frankalmoigne, for tenant in Frankalmoigne, by reason of his tenure, shal do divine service to his Lord, (as is laid before) and this he charged to do by the Law of holy Church and therefore he is accused and discharged of Fealty: but tenant in frankmarriage shall do for his tenure service; and if he do not Fealty, he shall do any manner of service to his Lord, neither spiritual nor temporal, which would inconvenient, and against reason, that man shall be tenant in an estate of heritance to another, and yet Lord shall have manner of service him: and so it seems shall do Fealty to Lord before the fourth degree be past. And when he hath done fealty, he hath done his services.

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Et si un Abbe tient de son Seignior en frankalmoigne, & Labbe & lement south four com seale alien mes les tenements a secular home en feeble ; en ceo cas le lar home fera fe a le Seignior , ceo que il ne post de son Sñr en kalmoinhe. Car Seignior ne dost de luy fealtie, don il avera nul mane service, que ser inconvenient ou il Sñr, & le tenement enus de luy.

And if an Abbot holdeth of his Lord in frankalmoign, and the Abbot and Convent under their common feal alien the same Tenements to a secular man in fee simple ; in this case the secular man shall do fealty to the Lord, because he cannot hold of his lord in Frankalmoigne. For if the Lord should not have Fealty of him, he should have no manner of service, which should be inconvenient where he is Lord, and the Tenements be holden of him.

This case is worthy of great obseruation, for hereby it appeareth, that albes it the Altenors held not by fealty nor any other terrene service, but only by spiritual services, and those uncertain, yet the alienee shall hold by the certain service of fealty : (and of this opinion is Littleton, agreeable with our Books in former Authoritie :) for the Law createth a new temporal service out of the Land to be done by the Alienee, wherewith the Abbot was not formerly charged, for the avoiding of an inconvenience, viz. that the feoffee should do no manner of service, and consequently that the land should be holden of no man. Wherein it is to be remembred, that (as hath been said before) all the lands and tenements in England in the hands of any subject are holden of some Lord or other, and that every Tenant must do some kind of service ; and that all lands and tenements are holden either mediatly

^{† 4 Co 3.}
^{32 E.3. Cessant 22.}
^{33 H.6.67.21 E.4.11.}
Lib.9. fol. 123
Anth. Lowes. Case.
^{† 2 Inst. 502. † 3 Co. 3.b.}

^{† F.N.B. 10.3.}

^{† Ante 1.}
^{† 2 Inst. 502.}
Lib.9. fol. 123. in Anth. Lowes Case.

immediately of the King, for originally all lands and tenements were derived from the King. And it is to be observed, that when the Law createth any new tenure, it is the lowest, (Tenure in Hocage) and with the least service that can be done, and nearest to the freedom former service : as in this case, a Tenure in Hocage by fealty only is created by the Law, which is the lowest and least service the Law can create, because Fealty is incident to every service, except Tenure in Frankalmoign ; for if it should create any other service, it must be Fealty also. And the Law, according to equity and justice, giveth this fealty to the man whom the land was before holden in Frankalmoign. And lastly, the Law so avoideth an inconvenience, as that it createth out of the Land a new service for avoiding of. It appeareth by our books, that a Seignior in Frankalmoign may be granted on said well, that no service could be demanded of a Tenant in Frankalmoign, tant come Britton 164.b. terres remaine en les maines les feoffees.

Sect. 140.

Item si home graunta a cel a un Abbe ou a Prior terres ou ements en frankalmoigne, ceux parolz frankalmoign) sont

Also if a man grant at this day to an Abbot or to a Prior Lands or Tenements in Frankalmoigne, these words (Frankalmoign) are void, for it is or

¶ b. 2

Ordeine per lestatute. Here it appeareth by the authority of Littleton, that this is a Statute, and yet the King alone speaketh, viz. Dominus Rex in Parlamento suo, &c. ad instantiam magnatum Regni sui concessit, providit, & statuit.

But

Lib. II. Cap. VI.

Of Frankalmoigne.

Sect. I.

*Vid. li. 8. the Prince's case
¶ 10 Co. 1.*

But because it is Dominus Rex in Parlimento, &c. concessit, it is as much in this case (being an ancient statute) as Dominus Rex autoritate Parlamenti concessit. Secondly, It is (amongst other Acts of Parliament) entred into the Parliament Roll, and therefore shall be intended to be ordained by the King, by the consent of the Lords and Commons in that Parliament assembled. Thirdly, it is a general law, whereof the Judges may take knowledge, and therefore it is to be determined by them, whether it be a statute or no. Now for the divers forms of Acts of Parliament, you may read them in the Prince's case, ubi supra.

*¶ Dyer 146. a.
Post. 143. ¶ 2 Inst. 530.*

¶ 7 Co. 36.

C Appel Quia emptores terrarum. This statute is called so, because the statute beginneth with these words, Quia emptores terrarum.

T Nul poe^t aliener,
&c. terres en fee simple a tener de luy mesme.

This is justly inferred upon the statute, but the letter of the statute is, that Feoffatus teneat terram illam de capitali Domino, &c. So as by the authority of Littleton, he that citeth a statute, is not bound to recite the ver^y words thereof, so long as he misseth not of the substance and necessary consequence thereupon, and yet the safer way is, to vouch the words of a law as they be.

Granta per licence mesme les tenements, &c. Here Littleton speaketh of a licence, or a dispensation within the said statute of Quia emptores terrarum (and mentioneth no other statute) which may be done by the King and all the Lords immediate and mediate, for it is a Rule in Law, Alienatio, licet prohibetur, consensu tamen omnium, in

hosdes, pur ceo que il est ordene per lestatute que est appelle; Quia emptores terrarum, (que lestatute fuit faite Anno 18 E. r.) que nul poe^t aliener ne graunter terres ou tenements en fee simple, a tener de luy, mesme. Il s'int si home seisie de certaine tenements queur il tient de son Seignor per service de Chivaler, & a cel jour il, &c. granta per licence mesmes les tenements a un Abbe, &c. en Frankalmoigne, Labbe tiendra immediatement mesmes les tenements per service de Chivaler de mesme le Seignor, de que son grantor tenoit, & ne tenuera my de son grant en frankalmoigne, per cause de mesme lestatut. Il s'int que nul post tenre en frankalmoigne, si non que soit per title de prescription, ou per force de graunt fait a aucun de ses predecessors, devant que mesme le statut fuit fait. Mes le Roy post doner terres ou tenements en Fee simple, a tener en Frankalmoigne, ou p auers services, c il est hors de cas de lestatute.

dained by the statut which is called, *a emptores terrarum* (which was made no 18 E. r.) that no man may alien nor gra Lands or Tenement in Fee simple to his of himself. So that a man seised of certain Tenements wh he holdeth of Lord by Knights Service, and at this he, &c. granteth licence the same Tenements to an Abb^e. in Frankalmoigne the Abbot shall be immediately the Tenements by Knight Service of the same Lord of whom Grantor held, and he not hold of his Grantor in Frankalmoigne by reason of the same Statute. So that no can hold in Frankalmoigne, unless it be title of Prescription or by force of a Grant made to any of his Predecessors before the same Statute was made but the King may graunt lands or Tenement in Fee simple to him in Frankalmoigne, by other services, he is out of the case of that Statute.

b.II. Of Frankalmoigne.

Sect. I 4 I.

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um favorem prohibita est, potest fieri, and quilibet potest renunciare juri pro se introduct. And
tenure of Lords immediate and mediate in this case shall enure to two intents, viz. to a
dispensation both of the statute of Quia emptores terrarum, and of the statutes of Mortmain, as
eton here implieh, because their deeds shall be taken most strongly against themselves. 43 A.1. P. 19. 9 E. 4 b. 11
it is a safe and good policy in the Kings licence to have a Non obstante also of the statutes P. Com. 502, 503.
Mortmain, and not only a Non obstante of the statute of Quia emptores terrarum. But it app G. London's case.
eth by Littleton (which is a secret of law,) that there needeth not any Non obstante by the V. 1. 10. 25. 16 31 & 110.
of the statutes of Mortmain, for the King shall not be intended to be misconstruant of the Mo. 321. 4 5 Co. 56.
and when he licenseth expressly to alien to an Abbot, &c. which is in Mortmain, he dredg 4 7 Co. 14. 11 C. 67.
make any Non obstante of the statute of Mortmain, for it is apparent to be granted in Mort-
main, and the King is the head of the Law, and therefore Presumitur Rex habere omnia iura in
suo pectoris sui, for the maintenance of his Grant to be good according to the Law, for which
purpose Littleton maketh no mention of any licence in Mortmain. Dispensatio, est mali-
libiti provida relaxatio, utilitate seu necessitate pensata.

Labbe tiendra, &c. per service de Chivaler. For although by the death of ^{# Ante 70. b.} Abbot there is neither Ward, Marriage, nor relief due, yet he holdeth by Knights ser- Litt. fol. 20. a
albeit the Lord cannot have the fruit of it, and if the Abbot with the consent of the Co = ^{# 2} R. 1. 18. ^{# 2} Inst.
alien the land over to a man and his heirs, there is the Ward, Marriage, and Relief ^{501.} S. R. 2. relief 14. 3 H. 4. 22.
v. d. But by prescription (as it hath been said) the successor of an Abbot may pay relief. ^{# Ante 84. a.} Vide Litt. fol. 20.
Abbot or Prior, &c. that holdeth lands by Knights service, albeit he ought not in respect of his profession, to serve in war in proper person, yet must he find a sufficient man, conve-
cilly arrayed for the war, to supply his place. And if he can find none, then must he pay
v. gage, &c. for his profession doth not privilege him, but that the Kings service in his war
be done, that belongeth to his tenure.

(Reader) Since Littleton wrote, a man might either in his life time, or by his last Will
writing, (m) give Lands, Tenements, &c. to any spiritual body Politick or Corporat, ^{(m) 1 & 2 Ph. & Mar. c. 5.}
holder of himself in Frankalmoigne, or by Divine Service, as by the Statute of 1 & 2
& Mariæ (which endured for twenty years) appeareth, which statute, since that time, hath ^{Mich. 8 & 9 Eliz.}
favourably and benignly expounded.

Iffint que nul poet tener en Frankalmoigne, si non que soit per title de
scription, &c. It is to be understood, that a man lessed of lands may at this day ^{(n) 4 E. 3. 21. 22 E. 3. 15.}
the same to a Bishop, Parson, &c. and their successors in Frankalmoigne, by the consent ^{38 H. 6. 25. Litt. c. p. con-}
of the King, and the Lords mediate and immediate, of whom the land is holden, for the Rule ^{firmat. 123}
Quilibet potest renunciare juri pro se introducto.
So is an Ecclesiastical Person hold lands by fealty and certain Rent, the Lord at this day ^{14 E. 3. tit. Mesne 7.}
confirm (n) his estate, to hold to him and to his successors in Frankalmoigne, for the ^{Lib. 11. fol. 66.}
services be extinct, and nothing is reserved but that he holds of him, and so he did be-

Mes le Roy poet, &c. car il est hors de case del statute.

It is clear that the King is out of the case of the Statute, for the Statute is Quod feoffatus ^{14 E. 3. tit. Mesne 7.}
at terram illam, &c. de capitali Domino feodi, &c. and this cannot be intended of the King,
as superior to all, and inferior to none, but where the King is bound by Acts of Parlia-
ment, and where not, Vide lib. 11. fol. 66. Magdalen Colledge Case.

Sect. I 4 I.

Tuota, que nul poit tener ter- **A** Nd note, that
ou tenements en Frankalmoigne, for- none may hold
del Gantors, ou les heires. Et pur lands or tenements in
Seignior, mesne tenant, & le tenant in Abbe que tient is an Abbot which

FOrprise del grantor ^{14 E. 3. tit. Mesne 7.}
ou de ses heirs. ^{14 H. 3. tit. disclaim, b. 32.}

The Tenure in Frankal- ^{15 E. 3. confirm. 8.}
moigne is an incident to the ^{47 H. 3. garr. 99.}
inheritable blood of the gran- ^{11 H. 4. 52. 14 H. 4. 5.}
tor, and cannot be transferred ^{10 H. 7. 11.}
nor forfeited to any other, no ^{28 Ass. 33. 18 E. 3. 18.}
more than a lordship of a ^{22 E. 3. 18. Corody.}
house of Beligton, which is ^{5. 22 H. 6. 50.}
intended to be in Frankal- ^{4 E. 2. avowry 201, 202.}
moigne, or homage ancestral, ^{19 E. 3. ibid. 122.}
or the writ of Contra formam ^{11 E. 3. Ib. 100. 30 H. 6. 7.}
Feoffamenti, or the writ of ^{33 H. 8. Dycr 51.}
Contra

2, E.3. Confir. 8.

1 Rol. 444.

Vide 15 E.4.

2 2 Rol. 447. cont

3 Hob. 130.b. & Post. 143.
213.b.

33 E.3. tit. Annuity 52.

3 Ass. Pl. &c.

4 2 Rol. 447. 501.

5 Co. 122.

2 E.4.46.

1 2 Rol. 501. 513.

7 E.4.12.a.

4 11 Co. 67.

(1) Pl. Com. 306.b.
In Sh.ington's case.
33 H.6.6.39 H.6.29.
24 E.3. mesme 7.

Contra formam collationi, or
any other incident to their in-
heritable blood. But it is no
incident inseparable, for the
Lord may release to the tenant
in Frankalmoigne, and then
the tenure is extinct, and he
shall hold of the Lord Para-
mount by fealty, as in the case
of Littleton Sect. 139.

I *Ou de ses heires.*
Here [or] hath the sense of
[and]: for a man cannot at
this day grant Lands in tail,
and reserve a Rent to his
heirs, and exclude the Grandz
himself; for the heir cannot
take any thing in the life of
the Ancestor, neither can the

heir take any thing by descent,
when the Ancestor himself is secluded. But if a man had granted lands at the Common
to hold of his heirs, these words [To hold of his heirs] are void, and he shall hold of the Es-
teem, as he held ever, which he should have done if he had made no reservation at all.

And albeit Littleton saith, that no man can hold lands in Frankalmoigne, but of the Grandz
or his heirs; yet might an Abbot by assent of his Covent, or a Bishop with assent of
Chap. and such like, by licence as is aforesaid, have given lands in Frankalmoigne, to hold
them and their successors, and, as Littleton himself agreeth, the King may give land in
Frankalmoigne. In which case the land shall be holden of him, his heirs and successors.

I *Et pur ceo est dit, si soit Seignior, mesne, & tenant, & le tenant est un
Abbe, &c.* By this it appeareth, that if the Seignior by transferred by act in Latin
stranger, and thereby the priory is altered, that the tenure in Frankalmoigne is chan-
ged to a tenure in Hocage by fealty, as well as it appeareth before, or when the Seignior of
nancy is granted to gnothier; and the Law in this case also createth a new fealty, where
Land was not charged before.

I *Donques les mesnalties deviend' per escheat al dit Seignior Paramount.*
This new Tenure created by Law shall upon the Escheat dition the Seignior; for al-
the Seignior nearer to the land drowns the Seignior that is more remote off; and yet
Lord in this case to whom the Mesnalty is escheated shall hold by the same services that
held before the Escheat.

Sect. 141.

I *H*ome de Religion.
And yet this case
extendeth to all ec-
clesiastical persons that hold
in Frankalmoigne, be they se-
cular or regular; for the Mesne
ought to acquit all of them, for
they be bound (a) to make pray-
ers for their founder, and his
heirs, and in consideration of
those prayers the founder, &c.
is bound to pay to the chief
Lord of all Rents and Ser-
vices issuing out of that land,
as it appeareth by that which
followeth.

I *De luy acquiter.*

de son mesne en frâk-
almoign, si le mesne
devy sans heire, don-
que le mesnaltie de-
viendra per escheate
al dit Seignior Par-
amount, & Labbe a-
donque tient de luy
immediate per fealtie
tantum, & ferra a luy
fealty, pur ceo que
il ne puit tener de luy
en Frankalmoigne, &c. Frankalmoigne, &c.

holdeth of his Mes-
ne in Frankalmoigne, in
the Mesne die without
heir, the Mesnalty sha-
come by Escheat to the
said Lord Paramount
and the Abbot sha-
then hold immediate
of him by fealty only
and shall do to him fe-
alty, because he can
not hold of him in
Frankalmoigne, &c.

I *E*t nota, que lou
tiel home de
religion tient ses Te-
nements de son Sûr
en frankalmoigne, son
Sûr est tenus per la
ley de luy acquiter de
chescun maner de ser-
vice que ascun Seig-
nior paramount de luy
voet aber ou deman-
der de mesmes le
tenements: & sil ne

AND note, th-
where such ma-
of Religion holds his
Tenements of his Lord
in Frankalmoigne,
Lord is bound by the
Law to acquit him
every manner of ser-
vice which any Lord
Paramount will ha-
or demand of him in
the same Tenement
and if he doth not

Of Frankalmoigne.

acquita pas, mes quit him, but suffereth a luy destre dit him to be distrained, &c. donqz il a envers son Seign. &c. he shall have against his Lord a Writ un bisefe de Mesne, and shall recovera envers ses damages & ses damages and cost of es de son suit, &c.

discharged; and he that is discharged of a felony, &c. by judgment, is said to be acquited of the felony, acquietatus de felonie; and if he be drawn in question again he may plead autre foits acquite. And therefore if such a Tenant as Littleton here speaketh of be dit charge, or keep in quiet, and to see that the tenant be safe= ty kept from any entries or other molestation for any manner of service issuing out of the Land to any Lord that is above the Mesne. (c) And hereof cometh (d) acquital, and quietus est, (that is) that

Acquirer is compounded of ad, and the old verb quietare, and signifieth in Law (b) to dñe= charge, or keep in quiet, and to see that the tenant be safe= ty kept from any entries or other molestation for any manner of service issuing out of the Land to any Lord that is above the Mesne. (c) Vide Sect. 142.540. (d) 8 E.2. Coron.424. Stant. Pl. Cor. L.5.

Vide hereafter in this Seq. in br. of de Mesne

(e) 4 E.3. 35. 17 E.3.44. 7 H.4.18.34 H.6.47. 13 E.4.6.F.N.B.136. Lib.9 fol.110 111. in Treschams case. 3 E.3.14.77.5 E.3.11. 4 H.6.23.39 E.3.19. 11 H.4.52. 12 H.4.9. 14 H.4.17.F.N.B.136. b. 39 H.6.30.33 H.6.7. F.N.B.135.m 4 E.4.35. 12 H.4.9.28 E.3.95. 17 E.3.39. (f) 39 H.6.31 a.2 E.4.27. F.N.B.136 m.17 E.2.tit. Mesne. 5 E.3.49. * Bracton lib. 2. fol.84. (g) 4 E.3.42.

here be three kinds of Acquittals. 1. An acquittal by Deed. 2. An acquittal by Prescriptio= nes, for service acquts service. 3. Tenure in Frankalmoigne, whereof Littleton here speaketh. 3. Tenure in Frankmarriage. 4. Tenure by reason of Dower.

De chescun manner de service. (f) An yet not of services only, as Homage, Ry, Rent=works, and other services, but also of improvement of services, as if he be di= sed for relief, Aide pur file marier, aide pur faire fitz Chivaler, &c. Also for suit service to a hundred, instead of the beasts of the tenant. (g) But in suit real in respect of ressource within any hundred, leet, or Turn, the tenant shall make no acquittal, for that is in respect of his person and ressource.

Briefe de Mesne. Breve de medio a writ of Mesne, so called by reason of the words writ of Mesne, which are Unde idem A. qui medius est inter C. & præsumatum B. A. who is he between C. that is the Lord paramount, and B. that is the Tenant paravall. And that there be six writs in Law that may be maintained, quia timet, before any molesta= distress or impleading. 1. A man may have his writ of Mesne, (whereof Littleton here before he be distrained. 2. A Warrantia cartæ, before he be impleaded. 3. A Mon= erunt, before any distress or vexation. 4. An Audita querela, before any execution sued. Curia claudenda, before any default of inclosure. 6. A Ne injuste vexes, before any di= or molestation. And these be called Brevia anticipantia, Writs of prevention.

Et recovera vers luy ses damages. It is to be known, that there be two several judgments in a Writ of Mesne, one at the Common Law; another by the Statute of W.2. at the Common Law he shall have judgment to recover his acquittal, and if he be di= ned or damnsid, his damages and costs: and the process at the Common Law was amons, Attachment, and Distress infinite, in the same County where the Writ is he. The Judgment by the said Statute of W.2. is a forejudge of the Mesnalty, and in two several cases: one upon Process given by the said Statute, viz. Summons, &c. and Grand distress; and if he cometh not, and the writ be returned, he shall be judged: the other case is, where a Tenant recovereth his acquital in a writ of Mesne; be not acquitted afterwards, he shall have a writ of Distringas ad acquitandum against me Mesne; and if he cometh not, he shall be forejudged by his default of the Mesnalty; so if he cometh, and it be found against him by verdict, he shall be forejudged: but fore= 46 E.3.31.18 E.2.tit. Mesne, F.N.B.136. 2 H.4.7.17 E.3. Contra formam Collat. 1. F.N.B.121. * Post.233.b. 7 E.3.4.tit. Mesne 18. 9 E.2.1bid.67. 14 E.2. ibid.70.Lib.9.fol.73.b. Doct. Husseys case. + Flach 352.10 Co.124.

The said Statute in case of forejudgment doth not bind a feme covert; and yet if judgment be given again a Baron and feme, it is not void, but erroneous, and to be

red in a writ of Error; and so forejudgment against a Tenant in tail shall bind the issue

in an Writ, until he reverts it by error. If two jointenants bring a writ of

and the one is summoned and severed, the other cannot forejudge the Mesne, for he

to be attendant to the Lord paramount, as the Mesne was, and that cannot be

. And so it is if there be two jointenants Mesnes, and in a Writ of Mesne brought

them, one maketh default, and the other appears, there can be no forejudger.

If the Tenant be disseised, and the Disseisor in a writ of Mesne for judge the Mesne shall not bind the Disseisee. And so if the Mesne be disseised, and a for judgment is had against the Disseisor, this doth not bind the Disseisee; for the words of the said Statute are, Quod tenens sine prejudicio alterius quam medii attornare se potest capitali Domino.

<sup>† 9 Co. 130 † 7 Co. 8a. 9.b
19 E.3. Judgment, 117.</sup>

But if the daughter, the son being en ventre sa mere, be for judged, it shall bind the that is born afterwards, because he had no right at the time of the for judgment. And so the Tenant enter in Religion, and his heir for judgeth the Mesne, and then the Aunceslor deraigned, he shall be bound causa qua supra. If there be Lord, Prior, Mesne, and Tenant, the Mesne cannot be for judged, because he alone can do nothing to the prejudice or disinherit his Church. And the like Law is of a Bishop, Parson, and the like.

No for judgment can be, but when there is but one Mesne between the Lord distraining and the Tenant, because the Tenant upon the for judgment cannot be attendant to the L distressing, in respect there is a Mesne between them: and so the said Statute provide in express terms.

W.2. cap. 9.

50 E.3. 23. F.N.B. 137.
Bract. 1.4. 256.b. Brit. f.
§ 8.b. Flet. 1.2. c. 43.

Nota, the Plaintiff in a writ of Mesne may chuse either Process at the Common Law or upon the said Statute of W.2. For judgment is called Foris judicatio, and he that is for judged, Foris Judicatus; and Bracton hath this writ, Rex Vicecomiti, &c. & non permittas quod A. capitalis Dominus feodi illius habeat custodiam heredis, quia in curia nostra foris judicatur custodia, &c. Fleta calleth it Abjudicationem, and thereupon cometh abdicatus; for he sa Post Proclamationem, &c. factam, abducetur medius de feodo & servitio suo.

Chap. 7. Homage Auncestral.

Sect. I 4

Per title de Prescription en le tenancie en le sanke le tenant, & auxy en le Seigniorie en le sanke le Seignour.

<sup>9 H.3. Vouch. 277. 47 H.
3. Gart. 99. Temps E.1.
Gat. 90. 4 E. 2. Vouch. 245
a 5 E.3. 43. 11 H. 4. 52.
4 H. 6. 26.</sup>

Here Littleton doth not define what Homage Auncestral is, but putteth an example in one case. For in the 146 Section it appeareth, that blood is not alwates necessary on the Lords side. In this example here put there must be a double prescription, both in the blood of the Lord, and of the tenant; and therefore I think there is little or no land at this day holden by Homage Auncestral.

<sup>† 9 Co. 130.
Brit. fol. 170.a.</sup>

And hereof it is said, Autant est le Seignior tenus a son homage, come le homage a son Seignior, forsque solement en reverence. And herewith agreeth Bracton; Est tanta & talis conexio per homagium inter dominum & tenentem, quod tantum debet Dominus tenenti quantum tenens Domino, praeter solam reverentiam.

<sup>Bract. fol. 78.
Glanv. l.9. c 4, 5, 6.</sup>

Trait a luy gar-

Tenure per Homage auncstral est, lou un Tenant tient nant holdeth his lan-
sa terre de son Seig: of his Lord by ho-
nior per homage, & mage, and the fam-
mesme le Tenant & Tenant and his An-
cestors whose Heir he
heire il est ont tenus have holden the sam-
mesme le terre del land of the same Lor-
dit Seignior & de and of his Ancesto-
r: ses Ancestors que whose heir the Lor-
heire le Seignour is, time out of mem-
est, de temps dont ry of man, by Ho-
memorie ne curt, mage, and have don-
per Homage, & ont to them Homag-
fait a eux homage. And this is calle-
Et ceo est appell Ho-
maje auncstral, per by reason of the con-
cause de continuance tinuance which ha-
que ad esse per title been by Title of P-
de Prescription en scription in the T-
le Tenancy en le nancy in the blood
sanke le Tenaunt, & the Tenant, and al-
auxy en le Seignior in the Seigniory i-

lib. II. Of Homage Auncestral. Sect. I 44, 145. 101

en le sâke le Seignior. Et tiel Service Homage Auncestral fait a luy garrantie, que le Seignior que est en e, & ad receive le homage de tiel Tenant, doit garrantir au Tenant quant il implede de la ter- tenus de luy per Homage Auncestral.

If the Lord grant the services of his Tenant by Homage Auncestral, the Tenant shall not be compelled in a Per quæ servitia to attorn, unless the Conusee will grant in Court to war-

nt the Land unto him.

If the Tenant vouch by force of this warranty in Law, it is a good counterplea, that the Tenant (or any one of his Ancestors) recessit de servitio suo, & fecit servitium suum A. B. sine qua coactione de sua propria voluntate.

¶ Et ad receive homage de tiel tenant. (a) So as before Homage received by Tenant could not absolutely bind the Lord to warranty; and therefore of ancient time ere lay (b) a Writ De homagio capiendo, for the Tenant against the Lord, to compell him to receive his homage for the benefit of his Warrantee. Which Writ you shall read in Bracton (c) Britton, and the Process and manner of trial thereupon; and the same you shall find 47 H. 3.

Sect. 144.

Et aussi tiel service per ho- mage Auncestral trait a luy acquitall, s. que le Sûr doit acqui- et le Tenant envers touts auters dñs paramont luy de chescun maner de service.

¶ Trait a luy acquital. Of acquittal somewhat hath been said in the Chapter of Frankalmoigne.

Vide Britton ubi supri.
14 H. 6. 25. 18 H. 6. 2. b.
Glanv. lib. 9 ca. 4 s. & 6.
9 H. 3. Voucher 277.
47 H. 3. Voucher 270.
271. 43 E. 3. 3. a.

warranty. Hereby appeareth what a reverend respect the Law bath to ancient inheritances continued in the blood of the Lord and of the Tenant: for in this example put, if the continuance hath not been in the blood of both bodies, no warranty belongeth to Homage Auncestral, but if ancient continuance hath been in both

[†] F.N.B. 134. f.
(a) See the second part
of the Institutes upon
the 6. Chap. of the sta-
tute of Bigamie.

lives, (n) then such Homage

Auncestral draweth to it war-

ranty: so as ancient continued

inheritance on both parties

bath more privilege & account

in Law, than inheritances

lately or within memory ac-

quired.

[‡] Post. 384. a.
18 H. 6. 2. b. per Newton

9 H. 3. Voucher 277.

(a) 9 H. 3. Voucher 277.

Temps E. 1. G. 1. 90.

45 E. 3. 23.

‡ F.N.B. 269. a.

(b) Glanv. lib. 9. ca 4 s.

& lib. 1. cap 3.

Bracton lib. 2. fol. 83.

(c) Britton fol. 172. 173.

47 H. 3. garrantie 99.

AND also such service by Homage Auncestral draweth to it acquital, s. that the Lord ought to acquit the Tenant against all other Lords paramount him of every manner of service.

Et il est dit, q̄ si tiel tenant soit impleid p un Præcipe uod reddat, &c. & il ouche a garrantie son Seignior, que vient us p proces, & demande del tenant que ad de luy iter a

AND it is said, that if such Tenant be impleaded by a Præcipe qd; reddat, &c. and vouch to warrantie his Lord, who cometh in by Process, and demands of the Tenant what he hath to bind

TUN Præcipe qd; reddat. This is understood of the Kings writ directed to the Sheriff of the County where the Land lieth, whereby the Sheriff is authorised to command the Tenant of the Land to yield the same to the Demandant; and of these words of the Writ (Præcipe quod reddat) the Writ is so called. Writs of

[‡] Ante 100. [‡] 4 Co. 8.
Seq. 142. & 540.

F.N.B. 192.
† 10 Co. 132.
Regist. 159.
‡ Post. 139.b.

of Præcipe be of four kinds ;
Præcipe quod reddat, Præcipe
quod faciat, præcipe quod per-
mittat, & Præcipe quod non
permittat, &c. as appeareth by
the Register.

(d) Mirecap. 5. Sect. 1. & 5.
Brad. li. 5. fo. 330. 381.
Brit. c. 7. de Gar. Vouch.
Fle. lib. 6. c. 23. 24. 25. 26.
&c. optime. Lamb. Expl.
Verb. Advocate.

† Post. 366. 389.a.
† Hob. 3. 28. † Noy. 131.
‡ 2 Rol. 738. † Post. 365.

10 Co. 130. † Cro. Car.
555. † Hob. 191. † Cro.
Ja. 307.
(e) Vid. Reg. Jud. for all
these judicial Writs.
(f) V. Vct. N.B. 179. 186.
39 E. 3. 28. 14 H. 6. 7.
17 E. 3. 4. 1. 3 H. 4. 4.
11 H. 4. 72. 45 F. 3. 12.
F. N. B. 13 b. 135.
‡ Post. 393.a.

**¶ Et il vouché a gar-
rantie.** A Voucher, in Latine
vocatio or advocatio, is a word
of Art made of the Verb voco,
and is in (b) the understand-
ing of the Common Law, when the Tenant calleth an-
other into the Court that is
bound to him to Warrantie,
that is, either to defend the
right against the Demandant,
or to yield him other Land, &c.
in value : and extendeth to
Lands or Tenements of an
estate of Freehold or inherit-
tance, and not to any Chattel
real, personal, or mixt, saving
only in case of a Wardship
granted with warranty, (as
shall be said more at large in
the Chap. of Warranties;) soz
in the other cases concerning
Chattels, the party, if he hath
a warranty, shall not vouch,
but have his action of Coven-
tant; if he hath a Deed, or if
it be by Parol, then an action
upon his Case, or an action of
Deceit, as the case shall re-
quire. Now seeing that one
Latine, French, or English
word can have this particular
signification; therefore the
Common Lawyer (that I
may speak once for all) is
driven, as the professors of
other liberal sciences use to
do, to use significant words
framed by art, which are cal-
led vocabula artis, though they
be not proper to any lan-
guage. He that voucheth is

called the Voucher, vocans, and he that is vouched is called Vouchée, Warrantatus. (c) The
process whereby the Vouchée is called is a Summoneas ad Warrantizandum; whereupon if the
Sheriff returneth, that the Vouchée is summoned, and he make default, then a (f) Magna
cape ad valentiam is awarded; and if he make default again, then judgment is given
against the Tenant, and he obi to have in value against the Vouchée. If the Vouchée
do appear, and after make default, then Parvam cape ad valentiam is awarded; and if he make
default again, then judgment as before. But if the Sheriff return, that the Vouchée had
nothing, then after writs of Alias and Pluries, a writ of Sequatur sub suo periculo shall be aw-
arded; and if the like return be made, then shall the Demandant have judgment against
the Tenant, but he shall not have judgment to recover in value, because the Vouchée was ne-
ver warned, and it appeareth that he hath nothing: but in the grand Cape ad valentiam, it ap-
peareth that he hath assets; and his making default after summons is an implied confession
of the Warrant. And it is called a sequatur sub suo periculo, because the Tenant shall los-
se

garranty, & il mēe
coment il & ses An-
cestors, q̄ heire il est,
ount tenus sa terre
del vouchée & de ses
auncestors de temps
dont memorie ne curt;
& si le Seignior que
est vouché ne avoit re-
ceive pas homage del
tenant, ne dascun de
ses auncestors, le Seig-
nior (sil voit) poit dis-
claim en le Seig-
nory, & issint ouste le
tenant de so garrāty.
Mes si le Sūr que est
vouché ad receive ho-
mage de le Tenant,
ou de ascun de ses
Auncestors, adonques
il ne disclaimera, mes
il est oblige per la ley
de garranter le Te-
nant: & donque si le te-
nant perd sa fre ē de-
fault del vouchée, il
recovera en value en-
vers la vouchée del
terres & tenements q̄
le vouchée avoit al-
temps de le voucher,
ou unques puis.

him to warranty, & he
sheweth how he & his
Ancestors, whose he
he is, have holden their
Land of the Vouchée
and of his Ancestors
time out of mind of
man; and if the Lord
which is vouched hath
not received Homage
of the Tenant, nor of
any of his ancestors, the
Lord (if he will) may
disclaim in the Seignio-
ry, and so ouste the te-
nant of his Warranty.
But if the Lord who is
vouched hath received
homage of the tenant,
or of any of his An-
cestors, then he shall
not disclaim, but he is
bound by the Law to
Warrant the Tenant;
and then if the Tenant
loseth his land in de-
fault of the Vouchée,
he shall recover in va-
lue against the Vou-
chée of the Lands and
Tenements which the
Vouchée had at the
time of the Voucher,
or any time after.

and without recompence in value, unless he upon that Writ can bring in the Voucher to warrant the land unto him. And if at the Sequat' sub suo pecul' the Tenant and the Vouchee make default and the Demandant hath judgment against the Tenant, and after brings a Scire fac' to have execution, the Tenant may have a Warrantia cartæ, and if he were impleaded by a stranger, he may vouch again : but if he had judgment to recover in value, he shall never have a Warrantia cartæ, or vouch again; for by this judgment to recover in value he hath benefit of the Warranty. And you shall find in Books a recovery with a single Voucher, and that is, when there is but one Voucher; and with a double Voucher, and that is, when the Vouchee voucheth over ; and so a treble Voucher, &c. Again, you shall find there also a forein Voucher, and that is, when the Tenant being impleaded within a particular jurisdiction (as in London or the like) voucheth one to warranty, and prays that he may be summoned in some other County out of the jurisdiction of that Court : this is called a forein Voucher, but might more aptly be called a Voucher of a Forreiner, de forinsecis vocatis ad warrantizandum. Note that by the Civil Law every man is bound to warrant the thing that he selleth or conveyeth, albeit there be no express Warranty: but the Common Law bindeth him not, unless there be Warranty either in Deed or in Law, for Caveat emptor, as shall be said more at large in the Chapter of Warranty in the third Book.

^{† Post. 393.}

Glouc. c. 12. F.N.B. 6.c.

^{‡ Cro. 14. § 1 Roll. 96.}

^{‡ F.N.B. 94.e.}

^{(u) Brit. 174.}

¶ Le Seignior (sil voet) poet disclaimer (u) en le Seigniorie. Disclaimer, disclamare, is compounded of de and clamo, and signifieth utterly to renounce the Seigniorie.

(a) Note, there be divers kinds of Disclaimer : that is to say, a disclaimer in the tenancy; (a) 47 H.3. Disclaimer 35. a Disclaimer in the blood; and a Disclaimer in the Seigniorie; whereof Littleton here putteth his case.

^{16 H.7.1.20 E.2.tit.}

^{Nuper ob. 14.F.N.B. 197}

^{& 15 t.b. 45 E.3.19.}

^{21 H.3.50 E.3.23.&c}

^{‡ Doc.Pla. 131.}

^{(b) 14 H.3.tit. Disclaimer b.33.}

(b) But if the Tenant in Frankalmoign bring a Writ of Mesne against his Lord, the Lord cannot disclaim in the Seigniorie, because he cannot hold of any man in Frankalmoign, but of his Donor and his heirs. And so note a diversity between a Tenure in Frankalmoign, whereby Divine Service is maintained, and Homage Auncestrel, which respecteth temporal Service. But if the Lord will not disclaim in the Seigniorie in the case of Homage Auncestrel, then albeit he hath not received Homage, he shall warrant the Land.

¶ Si le Seignior que est vouche ad receive homage, &c. il ne disclaimera. Therefore it is good for the Tenant, to the intent to oust the Lord of his Disclaimer, in his Voucher to alledge, that the Lord hath taken Homage of him; and if he alledge it not, and the Lord offer to disclaim, the Tenant may counterplead the same by acceptance of Homage : and the reason that the Lord cannot disclaim in that case is, for that he hath accepted his humble and reverent acknowledgment to become his man of life and member and terrene honor, and to be faithful and loyal to him for the Tenements which he holds of him, and against the acceptance hereof the Lord cannot disclaim.

^{† 11 Co. 67.}

^{47 H. 3. Disclaimer 35.}

^{Vid Brag. I.4. 25.2.b.}

^{16 H.7.1.}

^{Brit. 173.174.}

^{‡ Doc.Pla. 131}

¶ Que il avoit al temps del voucher. Hereby it appeareth, that the Tenant shall not be driven to recover in value only those lands which the Lord had from that Ancestor which created the seigniorie, for that were in a manner impossible, for that the Seigniorie must be created before time of memory, and the first creation of the Seigniorie did not create the Warranty; but the continuance of both sides time out of mind created the Warranty. And that is the reason that a writ of Annunity shall not (c) lie against the heir by prescription, because it cannot be known whether he hath any land by descent from the said Ancestor that first granted the Annunity. And here is a point worthy of observation, that in the case of Homage Auncestrel, (which is a special Warranty in Law) by the authority of Littleton, the lands generally that the Lord hath at the time of the Voucher shall be liable to execution in value, whether he hath them by descent or purchase. But in the case of an express Warranty, the heir shall be charged but only for such lands as he hath by descent from the same Ancestor which created the Warranty.

^{‡ 7 Co. 2.a. + 6 Co. 66.}

^{(c) 49 E.3.5.b 13 E.4.}

^{10.b.}

^{19 H.6.74 37 H.6.19.}

^{5 H.7.F.N.B. 152.}

^{(d) 28 E.152.}

^{9 Ed. 2.}

^{Wat.Cat. 20.19.Fines}

^{127.}

^{29 E.3.3. 18 E.3.1.}

^{2 H.4.10.23 E.3. Recov}

^{in value.}

^{16 E.3.Vouch.85.}

^{16 E.3 Vouch.44.}

^{22 Edw.3.Fitz.}

^{Nat.Bre.134 f.}

^{2 H.4.14.42 E.3.1.}

^{42 Ali.17.}

^{9 E.2 tit. Execut. 249.}

^{† 1 Rol. 821.892.}

^{† 2 Inst 395. † Post. 144.}

^{198.a. † 1 Rol. 883.}

^{† 2 Sid. 12.222.}

Upon a Judgment in Debt, the Plaintiff (d) shall not have execution but only of that land which the Defendant had at the time of the judgment, for that the action was brought in respect of the person, and not in respect of the land. But if an action of Debt be brought

against

^t 2 Sid. 378. ^f Dyer 49.^a

^t Post. 144. 209.ⁱ

^t Cro. 159. ^f 9 Rep. 94

(e) 22 Aff. pl. 32.

^t Mo. Rep. 253. ^f 5 Co.

36. ^t Plow. 440.

Finch. 353. ^t 2 Rol. 771.

^t Hob. 3. 28. ^f Noy. 131.

22 E. 1. Voucher 292.

against the heir, and he alieneth, hanging the Writ, yet shall the land which he had at the time of the original purchase be charged, for that the action was brought against the heir in respect of the land. (e) If a man be nonsuit, the land only which he had at the time of the ameritainment assised shall be charged, and not that which he had at the finding of the pleyn. For the ameritainment is not in respect of the land, but of his want of prosecution, which was default in his person. But the issues of a Juroz shall be levied upon the feoffee, albeit they were not lost before the feoffment, because he was returned and swoyn in respect of the land. Note the diversity.

If a man give lands in fee with warranty, and bind certain lands specially to Warrent, the person of the Feoffor is hereby bound, and not the land, unless he hath it at the time of the Voucher.

Sect. i 46.

Vid. Britton fo. 58. 110.

SOn Seigniorie est
extinct, & le Te-
nant tiendra de Seignior
prochein paramount, &c.
Here two things are to be ob-
served: First, that by this
disclaimer in the Seigniorie
the Seigniorie is (f) extinct
in the land.

Secondly, that after the
Disclaimer the Tenant shall
hold of the next Lord para-
mount by the same Services
as the mesne so disclaiming
held before.

Si un Abbe ou Pri-
or seit vouch, &c. com-
ment, &c. Uncore il
ne poet disclaimer, &c.
Here it appeareth of the Lords
side, that continuance of blood
is not necessary, but yet there
must be privity of succession
time out of mind in one polit-
ick body, for if that body be
once dissolved, though a new
be founded of the same name
and all the possessions be gran-
ted to them, yet the Homage
Auncestral is gone. But if a
Prior and Cobent be trans-
lated, concurrentibus his quo
in jure requiruntur to an Ab-
bot and Cobent, or to Dean

Ec est ascavoir,
que en chescun
cas ou le Seignior
poit disclaimier en son
Seigniorie p la Ley,
& de ceo voit disclaimier
en Court de Record, son Seigniorie est ex-
tinct, & le Tenant
tiendra del Seignior
prochein paramount
le Seignior que issint
disclaime. Mes si un
Abbe ou Prior soit
vouch per force de
Homage Auncestral.
&c. comment que il ne
un que pris Homage,
&c. uncore il ne poet
disclaimer en tiels cas
ne en nul autre cas,
car ils ne poient ani-
enter ou divester chose
de fee que ad este ve-
stue en lour meason.

AND it is to be un-
derstood, that in
every case where the
Lord may disclaim in
his Seigniorie by the
Law, and of this he
will disclaim in a Court
of Record, his Seig-
niory is extinct, and
the Tenant shall hold
of the Lord next par-
amount to the Lord
which so disclaimeth.
But if an Abbot or Pri-
or be vouched by force
of Homage Auncestral,
&c. albeit that he ne-
ver took Homage, &c.
yet he cannot disclaim
in this case, nor in any
other case, for they
cannot take away or
devest a thing in fee
which hath been vest-
ed in the house.

(f) 45 E. 3. 7. 22 E. 4. 35.
^t 9 Co. 130. ^f 5 Co. 133.

Vide Sect. 143.
. & Co. 102.

^t 4 H. 6. 12. 2 H. 6. 9.
^t 38 Aff. p. 22. 37 Aff. 6.
Lib. 3. fo. 73. &c. Dean
and Chap. de Norwich
Cafe.

^t Doc. Pla. 131.
^t 1 Rol. 891. 892.

and Chapter, there the Homage Auncestral remains; for though the name be changed, yet the body was never dissolved, but in effect it remaineth still. If the body Politick were founded within time of memory, there cannot be Homage Auncestral, for that continuance falleth; and though Auctor is ever properly applied to a natural body, yet it is called Homage Auncestral when the tenure is of a body Politick, for that it is Auncestral of the Tenants side: but in the other side, an Abbot or Prior cannot hold by Homage Auncestral, for, as appeareth by Lit-
tleton's examples, it must ever be Auncestral of the Tenants side. And where Little. putteth
his case of an Abbot or Prior, the same Law is of a Bishop, Dean Archdeacon, Prebend,
Parson, Vicar, and the like. Another thing here to be observed is, That an Abbot or Prior
cannot disclaim, &c. for regularly it is true. Quod meliorem conditionem Ecclesie sue facere
potest Praelatus, deteriorem nequaquam; and again, Ecclesie sue conditionem meliorem facere
potest

ossunt sine consensu, deteriorem non possunt sine consensu. And therefore an Abbot, Prior, Bis= 42 E. 3.27.5 E.4.1.
jep. Dean, Archdeacon, Prebend, Parson, Vicar, or any other sole Corporation that is set= 6 E.51 s2.
in auer droit, cannot disclaim, because, as Littleton saith, they alone cannot devest any fee
which is vested in their House or Church. For the wisdom of the Law would never trust en
de person with the disposition of the Inheritance of his House or Church: But an Abbot and
Prior and their Covent, the Bishop his Chapter, the Parson and Vicar their Patron and
Ordinary, and the like of other sole Corporations, without whose assent they could pass away
Inheritance. 10 E. 4. 2.a. 21 H.7.20

Ils ne poient auienter ou devester chose de fee, &c. These general wordz 6 E.3.4.1 s2.
abesert exceptions; for in a Quo warranto at the suit of the King against a Bishop, Ab- 1 E.3.4.
b or Prior, for Franchises and Liberties, if the Bishop, Abbot or Prior disclaim in them, 32 E.3.32.10.3.3.11.
it should bind their Successors. If an Abbot or Prior had acknowledged the Action in a 4. Abbot 1.1.1. P.3.11.
Writ of Annunity, this should have bound the Successor, because he cannot falsifie it in an 5. Abbot 1.2.1. P.2.11.
higher action, and there must be an end of Suits, Expedit Republicæ ut sit finis litium. But if 6. Abbot 1.2.1. P.2.11.
the Abbot levy a fine, or acknowledge the action in a Precepte quod reddat, the Successor shall 7. Abbot 1.2.1. P.2.11.
be bound pro tempore; but he may have a Writ of Right, and recover the land. 8. 7.

Per force de Homage Auncestrel, &c. Here (&c.) implieth or by any other
larranty, (i) as by the reason which our Author here yieldeth appeareth.

Choise de fee. (k) For if an action of Debt upon an obligation against an Ab- 9. See the book. n.2.
b, the Abbot acknowledgeth the Action, and dieth, the Successor shal not avoid Execution, above,
though the Obligation was made without the assent of the Covent, for he cannot falsifie the
covery in an higher action: Et res judicata pro veritate accipitur: and this is but a That=
l. And so it is of a Statute or Recogntzance acknowledged by an Abbot or Prior.

Sect. 147.

Item si home que
tient son terre p
image auncestrel a
en a un auer en fee,
alienee ferra Ho-
lage a son Seignior,
les il ne tient ve
n Seignour per ho-
lage Auncestrel, pur
que le tenancie
e fait continue en le
like de les aunc-
estrs alienee; ne la-
nee naverai James
continuance del te-
nancie en le tenant &
son sanke per la li-
cation est disconti-
ue. Et sic vide, que si
tenant que tient la
tre per homage aunc-
strel de son Seig-

Also if a man which holds his
land by homage Aunc-
strel alien to ano-
ther in fee, the Alienee
shall do homage to
his Lord, but he hold-
eth not of his Lord
by homage Auncestrel,
because the Tenancy
was not continued in
the blood of the Ance-
stors of the Alienee;
neither shall the Alien-
ee have warranty of
the Land of his Lord,
because the continu-
ance of the tenancy in
the tenant and to his
blood by the aliena-
tion is discontinued.
And so see, that if the
Tenant which holdeth
his Land of his Lord

Alien a un auer
en fee. For hereby
the priuity of the estate is al-
tered & the continuance of it in
the blood of the Tenant is
dissolved. But if the Tenant
maketh a Lease for life, or a
gift in tail, this is a continu-
ance of the priuity and estate
in the Tenant in respect of
the reversion that remaineth
in him; for the fee, whereof Lit-
tleton here speaketh, was not
out of him. But if the Tenant
maketh a feoffment in fee upon
condition, and dieth, his heir
performeth the condition, and
re-entreteth, the Homage aunc-
strel is destroyed in respect
of the interruption of the con-
tinuance of the priuity and
estate. And this case was put
and not denied in the argu-
ment (m) of the case between
the Lord Cromwell and An-
drews, Mich. 14 & 15 Eliz.
which I my self heard and ob-
served. As, if Cestuy que use had
made a feoffment in fee upon
condition, and entred for the
condition broken, he should
have detained the Land a

^{+ Post. 202 2.}

(m) 1 Mich. 14 & 15 Eliz.

^{5 H.7.}

^a F.N.B. 135.
^b 6 Co.9.

(a) 5 E.3.11. per Cantrel.

(b) Britton fol. 170.a.

33 E.3.20. 11 H.4.22.
17 E.3.47 59 73.74.
26 E.3.53. 16 E.3.56.
16 E.3. Voucher 87.
18 E.3.30 44 E.3.
Littleton fol. 169.

gainst the Feoffees for ever, for that the estate and pribity was for the time taken out of the Feoffees, and thereby dissolved for ever. But if the Land were recovered against the tenant upon a faint title, and the Tenant recover the same again in an action of a higher nature, there the homage auncestrel remains, for the right was a sufficient mean for the continuance: so it is he had reversed it in a writ of Error. (n) If the alienor be impleaded in Littleton's case, and bouch the alienor that held by Homage Auncestrel, albeit he cometh in by fiction of Law for many purposes in pribity of his former estate; yet to this purpose he cannot come in as Tenant by Homage Auncestrel, because of the discontinuance of the estate and pribity, and, as Littleton saith, the Tenancy was not continued in the blood. (o) And Britton saith, Et come ascuns quedent soit Vouche per Homage, & le Seigniour tende de averier que le tenement dount il voudroit translate hors del fank del primer purchasor per feoffment, ou per ascun autre translation; et tel cas le tenant charger de voucher son feoffor ou ses heires.

T Coment que il reprise estate del alienee en fee, &c. For the cause aforesayd in respect of the interruption of the pribity and continuance of estate. And herewith agree our Books in cases of Warranties in Deed, or Warranties in Law. See more of this the Chapter of Warranties.

Sect. 148.

Post. 348.a.

Ne ferra homage al fits.

If A. holdeth of B. as of the Manoir of Dale, whereof B. is seised in tail, B. discontinueth the estate tail, and taketh back an estate in fee simple, A. doth homage to B. B. doth seise the issue in tail entreth; A. shall do homage again to the heir in tail of B. because he is remitted to the estate tail; and the estate in fee that his Father had, in respect whereof the homage is done, is vanished, and the heir in tail is in of a new estate, in respect whereof he ought to do a new homage. (b) But regularly it is true which Littleton saith, that when a Tenant hath done once homage to his Lord, he is excused for term of his life to make homage to any other heirs of the Lord. But he shall do fealty to his Son; albeit he hath done fealty to the Father.

(b) Britton 175.176.

nior alien en fee, co- by Homage auncestrel-
ment que il reprise e- alieneth in fee, though
state de lalienee arer- he taketh an estate a-
re en fee, il tient la gain of the aliene in fee,
terre per homage, mes yet he holds the land
nemy per Homage aun- by homage, but not by
cestrel. Homage auncestrel.

image auncestrel remains, for the right was a sufficient mean for the continuance: so it is he had reversed it in a writ of Error. (n) If the alienor be impleaded in Littleton's case, and bouch the alienor that held by Homage Auncestrel, albeit he cometh in by fiction of Law for many purposes in pribity of his former estate; yet to this purpose he cannot come in as Tenant by Homage Auncestrel, because of the discontinuance of the estate and pribity, and, as Littleton saith, the Tenancy was not continued in the blood. (o) And Britton saith, Et come ascuns quedent soit Vouche per Homage, & le Seigniour tende de averier que le tenement dount il voudroit translate hors del fank del primer purchasor per feoffment, ou per ascun autre translation; et tel cas le tenant charger de voucher son feoffor ou ses heires.

I Tem il est dit, que si home ti-
ent la terre d son Se-
ignior per homage &
fealty, & il ad fait ho-
mage & fealty a son se-
ignior, & le seignior ad
issue fits, & devy, & le
seigniory descendist a
le fits; en ceo cas le
Tenant que fist ho-
mage al pere ne ferra
homage al fits, pur ceo
que quant un tenant
ad fait un soits ho-
mage a son Seignior,
il est excuse pur terme
d la vie de faire ho-
mage a ascun autre
heire del Seignior;
mes uncore il ferra
fealty al fits & heire le
Seignior, coment que
il fist fealty a son pere.

A Lso it is said, that if a man holds his land of his Lord by homage and Fealty, and he hath done Homage and Fealty to his Lord, and the Lord hath issued a son, and dies, and the Seigniory descendeth to the son; in this case the Tenant which did Homage to the Father shall not do Homage to the son, because that when a Tenant hath once done homage to his Lord, he is excused for term of his life to do homage to any other heir of the Lord, but yet he shall do fealty to the son and heir of the Lord, although he did fealty to his Father.

Sect. 149.

Tem si le Sûr,
apres le homage
luy fait per son te-
nant, grant le service
le son tenant per le
ait a un autre en fee,
le tenant atturna,
& donc le tenant
e serra my compel
e faire homage, mes
serra fealty, comment
ue il fist fealtie de-
ant a le grauntoz.
car fealty est incident
chescu atturnement
il Tenant, quant
Sûrie est graunt.
les si aucun home
it seisié dun mannoz,
un autre home tient
luy la terre come
l mannoz avantdit
homage, le quel
tenant ad fait ho-
maje a son Sûr que
it seisié del mannoz,
apres un estrange
et Præcipe quod red-
et envers le Sûr
l mannoz & reco-
ra le mannoz en-
es luy, & suist exe-
tion, en cest case le
tenant ferra autre-
ts homage a celuy
e recovera le man-
& comment que il fist
image devant, pur
que lestate celuy
e recevoit le pri-
x homage est de-
ite per le recovery; ved the first homage

Alio if the Lord, **T**em si le Seignior, Britton 167.
after the Ho-
maje done unto him
by the Tenant, grant
the service of his Te-
nant by Deed to ano-
ther in fee, and the Te-
nant atturneth, &c. the
Tenant shall not be
compelled to do ho-
maje, but he shall do
fealty, although he did
fealty before to the
Grantor. For Fealty is
incident to every at-
turnment of the Te-
nant, when the Seig-
niory is granted. But
if any man be seised of
a Mannor, and another
holds of him the Land
as of the Mannor afore-
said by Homage,
which tenant hath
done homage to his
Lord who is seised of
the mannor, if after-
wards a stranger bring-
eth a *præcipe quod red-*
dat against the Lord of
the Mannor, and reco-
vereth the Mannor a-
gainst him, and sues
Execution: in this case
the Tenant shall a-
gain do homage to him
which recovered the
Mannor, although he
had done homage be-
fore, because the estate
of him which recei-
ve per le recovery;

Ec. grant le ser-
vice de son Tenant per
fait, &c. Note a diversity, 13 E.1. tit. per quæ ser.
when the Lord alieneth the vitia 22. & tit. Gal. 91.
Seignior, and when the Te-¶ 6 Co. 1. ¶ 8 Co. 102.
nant alieneth the tenancy: for
when the Tenant hath done
homage, and the Seignior is
transferred to another either
by the act of the party, as ali-
enation, or by act in Law, as
descent, yet the Tenant shall
not iterate homage, as he shall
do fealty: but when the tenant
doth homage, and alieneth the
tenancy, there is a new Te-
nant which never did homage,
and therefore he ought to do
homage to the Lord, albeit his
Alienor had done it before.
And it is to be observed, that
none shall do homage but the
Tenant of the land to the
Lords of whom it is holden;
and therefore if homage be due
to be done by the Tenant, if
the Tenant alieneth the Land
to another, the Alienor cannot
be compelled to do homage.

Attorne, &c. Here
by (&c.) it is to be understood,
that albeit he pay his rent,
perform his annual services,
and do Fealty, which is a
part of homage, yet homage he
shall not do.

Mes si aucun home
soit seisié dans mannor,
&c. Here it appeareth, that
the case of the recovery of the
Seignior differeth from the
alienation of the Lord, which
is his own act, or the descent
of the Seignior to the heir,
which is an act in Law. And
the reason of this diversity
is, for that by the recovery,
the state of him that received
the homage is defeated; for it
shall not lie in the mouth of
the Tenant to falsifie, or to
frustrate or defeat, the recove-
ry which was against his
Lord of the Mannor, or Seig-
nior,

Vide Sect. 551.
33 E.3. Avowry 255.
37 H.6.33.39 H.6.34.
¶ H.7.11. Dic. & Stud.
fol. 45.28 H.8. Dic. 41.

nior, for that the Tenant had nothing therein, and every man by Law ought to meddle in such cases with that which belongeth unto him: which is worthy of observation concerning falsifying of Recoveries.

Note, that to false, in legal understanding, is to probe false, that is to avoid, or, as Littleton here saith, to defeat in Latine falsare, seu falsificare, i. fallum facere.

But since Littleton wrote, it is recited by Act of Parliament, That whereas divers &c. have suffered recoveries against them of divers Ma-

nors, &c. for the performance of their Wills, for the surety of their wives joyntures, &c. and the Recoverors had no remedy to compell the Freeholders and Tenants, &c. to attourn unto them, nor could by order of Law attain to the Rents, Services, &c. that Act doth give the Recoverors power to distrain as above: whereupon many have thought that this doth impugne Littleton's case of the Recovery. But distinguendum est: Littleton intendeth his case either upon a recovery by title, (for he saith, that the state of the Tenant in the Recovery is defeated,) or without any cause upon pretence of Title, which is all one; for the tenant cannot falsify, and the Lord himself as one that came in of a former Title. And Littleton hath good authority in Law warrant (a) his opinion, and the Statute of 7 H.8. extendeth to common Recoveries having consent and agreement, as appeareth by the Act it self, which then was and yet is a common assurance and conveyance, whereof the Law taketh notice, and whereupon (as appeareth by the Act) an use may be limited. So as it is apparent, that such Recoverors came in merely under the state of the Lord, &c. and had no remedy (as the Statute saith) to compell the Freeholders and Tenants to attorn; and without attournment could neither distrain nor above. Wherefore this Statute gave Recoverors remedy to distrain, and a form to above to justify, which they had not before, as it appeareth by the Doctor and Student, who lived at that time. The body of the Act is, That such Recoverors may distrain and make avowry, &c. as those persons against whom the said Recovery is should have done; &c. if the same Recovery had not been had, and have like remedy, &c.

If a man had made a Lease for years to begin at Michaelmas, reserving a Rent, and before Michaelmas he had suffered a common recovery, the Recoveror should distrain for that Rent which the Lessor before the Recovery could not. But if the Recovery had not been had, then he might have distrained, and so it is within the Statute. But if a fine had been levied of Manors and before attournment the Consee had suffered a common Recovery, the Recoveror should not distrain, &c. because the Consee against whom the Recovery was had could not.

But this Act extended only to Distresses and Abusures for Rents, Services and Customs and gave also a form of a Quare Impedit. But upon this Statute it was holden, That the Recoveror could not have an action of Debt against the Lessee for years, nor an action of waste against Tenant for life or years; and therefore remedy was prohibited in these cases by the Statute of 21 H. 8.

(a) A.8. cap. 4.

1 Post. 151.a.
(a) 39 H.6.22. 37 A.6.
88. 35 H.6.22.
† 1 Co.34.

28 H.8. Dier 41.

4 Post. 215.a + 5 Co. 111.
4 Post. 313.b. 321.a.
21 H.8. cap. 15.

¶ ne gerra en la is defeated by the recovery, and it shall not lie in the power of the tenant to falsifie or defeat the recovery which was against his Lord. And so see a diversity in this case, where a man cometh to a Seigniory by recovery, and where he cometh to the same by descent or the grant.

Sect. 150.

Vient a son Seignour. The Tenant ought to seek the Lord to do him homage, if the Lord be within England; for this service is personal as well of the Lords side as of the Tenants, for law requi-

I Tem si un Tenant que doit per son tenure faire his Tenure to do him a son Seignour Ho. Lord Homage come, vident a son eth to his Lord, a Seignour, & dit a faith unto him, Sir,

y, Sir , j eo soy a
uis faire Homage p
teneime nts que j eo
igne de vous, & j eo
e icy pris a vous
re homage pur mes-
es les T enements,
et q j eo vous p y que
e ces voiles receiver
moy.

ional, and the rent may be paid and received by other ; and therefore a tender of the rent
on the land is sufficient.

ought to do homage
unto you for the tene-
ments which I hold of
you, and I am here rea-
dy to do homage to
you for the same tene-
ments , and therefore
I pray you that you
would now receive the
same from me.

reth exder and decency. And
therefore Bracton saith, Et iei-
endum, quod ille qui homagium suum facere debet, obtenta rever-
tentia quam debet Dominus suo,
adire debet Dominum suum ubi-
cunque inventus fuerit in reg-
no, vel alibi, si possit commode
adii, & non tenetur Dominus querere suum tenentem, & sic
debet homagium ei facere. And
the same Law it is for Feal-
ty. And the diversity be-
tween these services and the
rent is, because that these are

Bracton fol. 80.a.
And Britton fol. 171.
agreed herewith.
¶ 8 Co. 114. ¶ Post 207.a

Sect. 151.

Et si le Sñr a-
donques refusa-
ceo receiver, don-
e apres tiel refusal
Sñr ne poet di-
einer le Tenant pur
homage aderere, de-
nt que le Sñr re-
iroit le Tenant de
re a luy Homage,
e Tenant a ceo faire
fusa.

AND if the Lord
shall then refuse
to receive this, then
after such refusal the
Lord cannot distrein
the Tenant for the
Homage behind, be-
fore the Lord requi-
reth the Tenant to do
Homage unto him, and
the Tenant refuse to
do it.

And the reason hereof
is, for that when the
Tenant hath done
his endeavour and duty to
offer his corporal service, and
the Lord refuseth the same, or
doth not accept his service
upon his tender thereof,
(which is a refusal in Law)
then the Law in respect of
the Lords fault requireth, that
before the Lord can distrein
for it, that he doth require the
tenant to do that service ; and
if he either refuse to do it, or
do it not when he is required,
it is a refusal in Law.

Vide Bract. fol. 83.
Britton 171.172.
21 E.3.24.21 Ass. p.73.
20 E.3. Anewry 223.
45 E.3.9 7 E.4.4.
21 E.4.17.20 H.6.31.
¶ 9 Co.79. ¶ 6 Co.31.

Sect. 152.

Tem hõe poet te-
ner la terre p ho-
mage Auncestrel et per
cuage ou per auter
vice de Chivaler,
sibien s'come il poit
la terre p homage
Auncestrel en Socage.

Also a man may
hold his Land by
homage Auncestrel and
by Eicuage, or by o-
ther Knights service, as
well as he may hold his
land by Homage Aun-
cestrel in Socage.

So as Homage Aun-
cestrel may belong as
well to a tenure by
Escuage or Knights service,
as to a tenure in socage, or
to a tenure in nature of So-
cage, whereof there hath some-
what been spoken in the Chap-
ter of Socage.

Chap. 8.

Grand Serjeanty.

Sect. 152

TEnure per
grand Ser-
jeanty. Ser-

jeanty cometh of the French word [Serjeant] i. Satelles, and (a) Serjeantia idem est quod Servitium. And it is called (b) Magna Serjeantia, or Serjanteria, or Magnum servitium, great service, as well in respect of the excellency and greatness of the person to whom it is to be done, (for it is to be done to the King only) as of the honour of the service it self; and so Littleton himself in this Section saith, that it is called Magna Serjeantia, or Magnum Servitium, because it is greater and more worthy than Knights Service, for this is revera Servitium Regale, and not Militare only. Fleta saith, Magna autem Serjeantia dici poterit, cum quis ad eundum cum Rege in exercitu cum equo co-operto vel hujusmodi ad patriæ tuitiōnem fuerit feoffatus.

TDe nostre Seignior le Roy. This Tenure hath seven principal properties. 1. To be holden of the King only. 2. It must be done when the Tenant is able in proper person. 3. This Service is certain and particular. 4. The relief due in the respect of this Tenure differeth from Knights Service. 5. It is to be done within the Realm. 6. It is subject to neither Aid pur faire fitz Chivalier, or file marier. And 7. It payeth no Escuage.

TCome de porter le banner de nostre Seignior le Roy, ou de amesner son host, This great Service to the King may (as it appeareth hereby) concern the Wars and matters mi-

TEnure per
grand Ser-
jeantie est,

Iou un home tient ses terres ou tenements de nostre Seignior le Roy per tiels services que il doit en son propre person faire al Roy; come de porter le banner de nostre Seignior le Roy, ou sa lance, ou de amesner son hoste, ou destre son Marshal, ou de porter son espee devant lui a son coronement, ou destre s sewer a son Coronement, ou son Carver, ou son Butler, ou destre un de ses Chamberlaines de le receoit de son Exchequer, ou de faire autres tiels services, &c. Et la cause que tel service est appell grand Serjeanty est, p ce que il est plus grand & plus digne service que est le service en le tenure descuage. Car celuy que tient p Escuage nest pas limite per sa tenure de faire aucun plus especial service que aucun autre que ient per escuage doit faire. Mes celuy que

TEnure by gran
Serjeanty is
where a man
holds his Lands
Tenements of
Sovereign Lord
King by such ser-
vices as he ought
do in his proper per-
son to the King; to
carry the banner
the King, or his land
or to lead his Army,
to be his Marshall,
to carry his sword
fore him at his Cor-
onation, or to be
Sewer at his Coro-
nation, or his Carver,
his Butler, or to be
of his Chamberlain
of the receipt of
Exchequer, or to do
other like service
&c. And the cause
why this service is ca-
led grand Serjeanty
for that it is a great
and more worthy ser-
vice than the service
the Tenure of Escuage.
For he which holds
by Escuage is not
mitied by his Tenure
to do any more es-
cial service than an
other which holds
by Escuage ought
do: but he which
holdeth by gran-

(a) Glanvil lib.9. cap.4.

(b) Bracton lib.2.35.
& 84,85.lib.1. cap.10.
* Fleta lib.1. cap.10.
lib.2. cap.9. In fine
Britton cap.66. fol.164,
165.a
Ockham cap. quod non
absolvitur.45 E.3.25 per Finchden
Fleta ubi supra.Bracton lib.2. 84. 11 H.
4.34. 10 H. 4. Avowry
267. F.N.B. 83.
13 H.6.22c.demeine 11.23 H.3. tit. Gard.Stat.de
Ward & relev. 28 E. 1.

Of Grand Serjeanty.

Sect. I 54.

106

nt per grand Ser- Serjeanty ought to do
ney doit faire un e- some special service to
cial service al Roy, the King, which he that
il q tient p escuage holds by Escuage ought
dolt faire. not to do.

If the King giveth lands to a man to hold of him to be his Marshal of his Host, or to be 16 Eliz 285.
Marshal of England, or to be Constable of England, or to be high Steward of England, Chamberlaiⁿ 26 287.
Chamberlain of England, and the like, these are grand Serjeanties, and these and such like
and Serjeanties are of great and high jurisdiction, and some of them concern matters in= <sup>+ O kham. p. officium
constitutarii</sup>
time of war, and some services of honour and peace. And this is to be obserued, (2) R. 2. yet ^{(2) R. 2. et 6 Co. 21.}
though there were divers Lords Marshals of England before the Reign of (2) R. 2. anno 10 R. 2.
ng R. 2. created Thomas Mowbrey Duke of Norfolk, the first Earl Marshal of England,
nomen comitis Mareschalli Angliae.

¶ On de porter son espee, &c. ou desfe son Sewer a son Coronement, &c.
and such like grand Serjeanties at the King's Coronation are services of honour in
time of peace.

¶ Desfe un de ses Chamberlains, &c. ou de faire autiels services. + 4 Inst 106.
is also a Tenure by grand Serjeanty to hold (a) by any office to be done in person con= (a) Vide s 1 H. 3. stat 5.
cerning the receipt of the King's treasure. Quia thesaurus Regis respicit regnum & regnum: And 10 H. 3 c. 11. 14 H. 3 c. 12.
sus regius est anima Reip. so it is Firmamentum belli, & Ornamentum pacis. 26 H. 8 c. 2 34 35 H.
Milites camerarii dicuntur, quia pro camerariis ministrant: and concerning their office this is 8 c. 16. 11 E. 4 fol. 1.
effect, as Ockham (b) saith, Officium Camerariorum in recepta consistit in tribus; scilicet, claves Pl Com 207. 208
rum, &c. bajulant, pecuniam numeratam ponderant, & per centenas libras in forulo mihiunt. G. rafius Tiburientis in
discontinuance in effect hath worn out their office; and yet they continue their name, libro nigro sub custodia
keep the keys of the Treasury where the Records do lie. camerorum.
And another saith, Camerarius dicitur a camera, quia camera est locus in quem thesauri re- Ro. claus 6 E. 1. memb. 1.
siguntur, vel conclave in quo pecunia reservatur. So as Camerarius in legal signification est custos Ex 1. Atra Marrow
census: and Willelmus de Bello campo comes Warwici (held) officium camerae in Scaccario. (c) ex inquisitione post
by any office concerning administration of Justice; quia justitia firmatur solium. mortem Variani de St. Pet. o 4 E. 2 Cest.
It appeareth by an ancient Record, (c) that Varianus de Sancto Petro tenuit de domino rege Vid. 7 A. 12. 7 E. 3. 57.
apite medietatem Serjeantiae pacis per servitium inveniendi decem servientes paci, ad custodien-
pacem in Cestria.

Ockam of the institution and ancient order of the Exchequer. Dyer 4 Eliz. 213. the
her of the Exchequer holden by grand Serjeanty.

¶ Iuels services, &c. Here by [&c.] is to be understood other like services not expres-
as partly appeareth by that which hath been said; viz. to be Steward of England, Con-
stable of England, Chamberlain of England, and other honourable services, whereof more
will be said in this Chapter.

¶ On un special service al Roy. That is to say, that this great service be specially
done; for it may consist of divers branches, as to go with the King in his war in the 23 H. 3. gard. 148.
ward, and to return in the rereward; and also to pay rent, &c. But yet it must be certain
particular.

Sect. I 54.

Cem, si tenant que tient per
Escuage morut, son heire
eant de pleine age, sil tenoit
un fee de Chivaler, le heire ne
aura forisque C s. pur relief, pay but a C s. for relief, as is or-
me est ordene per lestatute Magna
Magna Charta, cap. 2. Mes si Charta, c. 2. But if he which hold-
que tient de Roy per grad

A lso if a Tenant which holds + Ante 83. a.
by Escuage dieth, his heir
being of full age, if he holdeth
by one Knights fee, the heir shall
dained by the Statute of Magna
Charta, cap. 2. But if he which hold-
eth of the King by grand Serjeanty

Serjeantie morust, son heire este. dieth, his heir being of full age, the
aut de plein age, le heire paiera heir shall pay to the King for relief
al Roy pur reliefs le value de les one years value of the lands or te-
terres ou tenemts per an (ouster nements which he holdeth of the
les charges & reprises) queur il King by grand Serjeanty, over and
tient del Roy per grand Serjeant- besides all charges and reprises. And
tie. Et est ascavoir, que Serjeanty it is to be understand, that Serjeantia
in Latin idem est quod servitium; in Latin is the same *quod servitium*
& sic Magna Serjeantia idem and so *Magna Serjeantia* is the same
est quod magnum servitium. *quod Magnum servitium.*

Paiera al Roy pur relief le value de ses terres, &c. And herewith ag-

† 4 Co. II.

II H. 4. 72 b.

¶ Serjeantia idem est quod servitium. Hereby it appeareth that the explanation
of ancient words, and the true sense of them are requisite, and to be understood per verba
tiora.

Sect. I 55.

† 6 Co. 20.

Tenants per es-
cuage doient faire leur service hors
del Roialme.

F.N.B. 83. E.
‡ 4 Co. 88. ‡ F.N.B. 271. d.

For he that holdeth by Cor-
nace or Castle=gard holdeth
by Knights service, and is to
do his service within the
Realm, but he holdeth not by
escuage; and therefore Little-
ton materially said, Tenant
per Escuage, and not Tenant
by Knights service.

¶ Pur le greinder part. For to bear the King's Banner, or his Lance, or to lead
Host, and to be his Marshal, &c. may be as well without the Realm; and therefore Little-
ton [for the greatest part.]

Tem ceux q teig-
nont per escuage
doient faire leur ser-
vice hors de Roialme,
mes ceur q teignont
per grand Serjeantie,
¶ le greinder part, doi-
ent faire leur services
deins le Roialme.

A lso they which
hold by Escuage
ought to do their ser-
vice out of the Realm
but they which hold by
Grand Serjeanty (for
the most part) ought
to do their service with-
in the Realm.

Sect. I 56.

4 H. 5. ca. 7. 22 E. 4. ca. 8.
Camden in Britannia.
‡ Ante 63. a.

Enemar-
ches de
Scotland.

Marches is either
a Saxon word, and
signifieth Limits,
Borders; or an En-
glish word, viz.
Marks. Nota, for
that it lieth near
to Scotland, it is
said in the Mar-
ches of Scotland,
and yet the Land terre,

Tem il est dit, que en
le Marches de Scot-
land ascuns teignont de
Roy per Cornage, cesta-
scavoir, per ventier un
cornu, pur garnir homes
de pais quant ils oyent
que le Scottes ou autres
enemis veignont ou vo-
ulent enter en Engle-
terre, quel service est

A lso it is said, that in
the Marches of Scot-
land same hold of the
King by Cornage, that
to say, to wind a Horn, to
give men of the Country
warning when they hear
that the Scots or other
Enemies are come, or will
enter into England, which
service is grand Serjeanty
gran-

raund Serjeanty. Mes But if any tenant hold of
ascun tenant tient das any other Lord than of
m auer Seignior que de the King by such service
oy per tiel service de of Cornage, this is not
ornage, ceo nest pas graund Serjeanty, but it
raund Serjeanty, mes is Knights Service, and
t service de Chvaler, & it draweth to it Ward and
ait a luy garde & mar- Marriage: for none may
age: car nul poit tener hold by grand Serjeanty,
graund Serjeanty si no but of the King only.
Roy tantsolement.

nights service of the King it is grand Serjeanty; so as the Royal dignity of the person of
e Lord maketh the difference of the Tenure in this case. And I find that there were Cor-
cularii amongst the Romans; & dicti fuerunt corniculati, quia cornu faciebant excubias mili-
es: and Magna Serjeantia is appropriated only to this Tenure.

Sect. 157.

I Tem home poit
veier Anno 11
.4. que Cokayne,
bonque chife Ba-
on descherquer, vient
le Common Bank,
tant obesques luy
Copy dun recorde
hac verba; Talis
net tantam terram de
omino Rege per Ser-
jeantiam, ad invenien-
um unum hominem ad
uerram ubicunque in-
a quatuor Maria, &c.
et li demaunda sil
ut graund Serjean-
te ou petit Serje-
antie. Et Hanke a-
onques disoit, que
fuit graunde Ser-
jeantie, pur ceo que
ad ser vice a faire p-
ops dun home, & sil
e purra trover nul
ome a faire le ser vice
ur luy, il mesme
oit faire. Quod alii Justiciariz concesse-

A lso a man may
see in Anno 11
H.4. that Cokayne, then
Chief Baron of the
Exchequer, came into
the Common Place,
and brought with him
the Copy of a Record
in these words; *Talis*
tenet tantam terram de
Dominio Rege per Ser-
jeantiam, ad invenien-
dum unum hominem ad
guerram ubicunque infra
quatuor Maria, &c.
And he demanded, if
this were Grand Ser-
jeanty or petit Serjean-
ty. And Hanke then
said, that it was grand
Serjeanty, because he
had a service to do by
the body of a man,
and if he cannot find
a man to do the ser-
vice for him, he himself
ought to do it. *Quod*
alii Justiciariz concesse-

whereof Littleton
here speakeith herh
in England.

Per Cornage.

Cornagium is vert-
bed (as Cornuare
alsois) a cornu, and
is as much (as be-
fore hath been no-
ted) as the service
of the Horn. It is
also called in old
Books Horngeld.

Note, a Tenure ^{23 H. tit. 148. 8 E. 3. 66.}
by Cornage of a
common person is ^{in me.}
^{16 E. 3. avowry 93.}
^{F N S. 83.}

Et sil ne purra tro-
ver nul home a
faire le serv' pur luy, &c.
Hereby it appears, that Te-
nant by Grand Serjeanty
may in some cases make a
Deputy: and therefore the di-
versity is, that where the
grand Serjeanty is to be done
to the Royal Person of the
King, or to execute one of those
high and great Officers, there
his Tenant cannot make a
Deputy without the Kings
licence; and therefore Littleton
hath said before, that such ser-
vices are to be done in proper
person. But he that holdeth
to serve him in his war wt h-
in the Realm, or by Cornage, ^{11 H. 4. 72.}
may make a Deputy.

* Johannes de Archier, qui * Claus. 18 H. 3. M. 5.
tenet de Domino Rege in capi-
te per Serjeantiam archieriae, &c.
in Comitatu Glouc' haeres in
custodia.

Intra quatuor Ma-
ria. That is, within the
Kingdom of England and the
Dominions of the same King-
dom.

Now it is good to be seen
what persons that hold by
grand Serjeanty may do and
perform that honourable ser-
vice in person, and who ought
not to be received thereun-
to,

Rot. Escaet. 41 H. 5.
nu. 23. Steph Haring-
dons Case.

(a) R. 2. Rot. claus. m. 45

to, but ought to make a sufficient Deputy. At the Coronation of (a) King R. 2. J. Wiltshire Citizen of London exhibited his Petition to the high Steward of England in his Court, that where the said John held certain Lands in Haydon in the County of Essex of the King by grand

Serjeanty, viz. to hold a tow-

el when the King should wash his hands before dinner the day of his Coronation, &c. and prayed that he might be accepted to do this office of Grand Serjeanty, the judgment followeth: Et quia apparet per record. de Scaccario Domini Regis in Curia monstrat' quoniam praedicta nementa tenentur de Domin' Rege per servitium praedit. Ideo dictus Johannes admittitur ad servitium suum hujusmodi faciendum per Edmundum Comitem Cantabrigiæ deputatum suum & sic idem Comes in jure ipsius Johannis Manutergium tenuit quando Dominus Rex lavabat manus sua dicto die Coronationis sue ante prandium.

By which Record it appeareth that the said J. Wiltshire being of this quality, and having not any dignity could not do and perform this high and honourable service to the Royal person of the King, but did make an honourable Deputy, who performed it in his right; which is worthy of observation.

At the same Coronation William Furneall exhibited his Petition in the same Court, that where he held the Mannor of Farnham in the County of Buck with the Hamlet of Cere in the same County, by the service to stand to the King at his Coronation a Glove for his right hand, and to support the King's right hand the same day, while he held in his hand the verge Royal, the Judgment followeth: Qua quid' petitione debite intellecta, & facta publica proclamation si quis clameo ipsius Willielmi in ea parte contradicere vellet, nemineque ei contrariante, consideratum fuit, quod idem Willielmus, assumpto per eum primitus ordine militari, ad servitium praeditum admitteretur faciend': & postmodo, (viz.) die Martis proximo ante Coronationem praedictam, Dominus Rex ipsum Willielm' apud Kenington honorifice praefecit in militem; & sic idem Willielmus servitum suum praed' dicto die Coronationis juxta considerationem praed' perfecit & in omnibus adimplevit.

By whiche it appeareth that a Knighe is of that dignity, that he may perform this high and honourable service in his own person; and although this William Furneall was descended of an honourable family, yet before he was created Knight he could not perform it.

And Sir John Argentine Thibaler performed the service of Grand Serjeanty, to be the Kings Cup-bearer at the same Coronation.

(m) Vide 1 R. 2. m. 45.

(m) Anne, which was the wife of Sir John Hastings Earl of Pembroke, who held the Mannor of Ashley in Norfolk of the King by Grand Serjeanty, viz. to perform the office of the Harry at his Coronation, was adjudged to make a Deputy, because a woman cannot do it in her person, and thereupon she deputed Sir Thomas Blount Knight, who performed the same in her Right. John, son and heir of John Hastings Earl of Pembroke, exhibited in the same Court his Petition, shewing that by his tenure he was to carry the great Spurs of Gold before the King at his Coronation, &c. The Judgment is. Audita & intellecta billa praedicta, pro eo quod dictus Johannes est infra etatem, & in custodia Domini Regis, quanquam sufficenter ostenditur per recorda & evidencias, quod ipse servitium praedictum facere deberet; Consideratum existit, quod esse ad voluntatem Regis, quod dictum servitium ista vice in jure ipsius Johannis ficeret: & super hoc Dom' Rex assignavit Edmund' Comitem Marchiæ ad deferendum dicto die Coronationis praedicta calcaria in jure praefat' heredis, salvo jure alterius cujuscunq. Et sic idem Comes Marchiæ Calcaria illa praedicta die Coronationis coram ipso Domino Rege deferebat.

By which it appeareth, that the heir before he hath accomplished his age of one and twenty years cannot perform this great and honourable service, but, during his minority, the King shall appoint one to perform the service.

Sect. 138.

46 E. 3. 15. a per Finch-
den.

Here Littleton saith, **T**E nota que **A**ND note that all
that he that holds by Grand Serjeanty doth hold by Knights **E**touts que teng- **A** which hold of
nont de Roy per grand the King by Grand Ser-

Serjeanty teignont de Serjeanty hold of the
Koy p service de Chf. King by Knights Ser-
vice, and the King for
this shall have Ward ,
Marriage, and Relief ;
but he shall not have of
them Escuage , unless
they hold of him by E-
scuage.

Service, which is o' fated of
the effects. And therefore Littleton doth add, that the King
shall habz Guard, Murr ge,
and Belief, which are the ef-
fects of Knights serbitce, &c.

Sometimes in ancient Re-
cords, Servitium militare is
called servitium Hauberticum,
or servitium Brigandinum, or
servitium Loricatum. And a
Haubert or Brigandin signifieth
a Coat of Mail.

Petit Serjeanty.

Sect. I 59.

Toute per pe-
tit Serjeanty
est, lou home
ent sa fē de nōstre
ñr le Roy, de render
le Roy annualment un
tke, ou un espee, ou
un dagger, ou un cut-
el, ou un launce, ou
un paire de Gants de
ferre, ou un paire de
spours doze , ou un
ete, ou divers setes,
ou de render auters
iels petits choses
ou chauts le Guerre.

common person is called a **Tenure in gross**, that is by it self, and not linked or tied to any Honour, &c.

And this **Tenure of the King in Capite** is said (a) to be a **Tenure of the King as of his Crown**, that is, as he is King. (b) And therefore if one holdeth land of a common person in gross as of his person, and not of any Honour, &c. and this **Signory** cheath to the King, yea though it be by attaint of Treason) he holdeth of the person of the King, and not in Capite, because the original **Tenure** was not created by the King. And therefore it is truly said, that a **Tenure of the King in Capite**, when the land is not holden of the King as of his crown, is any Honour, Castle, or Honour, &c. but when the land is holden of the King as of his crown. Vide *Le Statute de l'E. C.*

Note, that an Honour is the most noble **Signory** of all others, and originally created by the King, but may afterward be granted to others. See for the creation of an Honour, 3*i* H. cap. 5. 33 H. 8. cap. 37, 38. 37 H. 8. cap. 8. +

And it is to be observed that a man may hold of the King in Capite, or of his Crown, as well in **Horige** as in **Knights service**.

See *l. i. n. d. B. o. r. v. i. n. g.*

I De render al Roy annualment un arke, ou un espee, &c. As grand Ser-
eanty must be done by the body of a man, so petit Serjeanty hath nothing to do with the
body of a man, but to render some things touching war, as a Bow, a SworD, a Dagger, a
Knife, a Lance, a patt of Gantlets of iron, or shafts, and such like.

for his passage is called Liberum servitium, and therefore it is said, Per liberum servitium, ad
veniendum nobis quin que naves ad transitum nostrum ad mandatum nostrum. And therefore clearly
such a Tenure is neither Grand Serjeanty, nor Knights Service, because nothing is to be
done by the body of any man, nor in that case touching war, but Ships to be found. In
this is the reason that Littleton yieldeth of the examples he doth here put, because that such
tenant by his tenure ought not to go, nor to do any thing in his person touching war. Au-
thor with agreeth Bracton, Ex parvis Serjeantiis que non respiciunt Regem, nec Patriae de-
fensionem, nullum competere debet maritagium nec custodia, &c.

If a man holdeth land of the King, to find an horse of such a price, and a saddle and a bridle,
by forty days, or any other time, when the King goeth with his army against Wales,
this is Petit Serjeanty, and no Grand Serjeanty, for the cause aforesaid.

Sect. 160.

¶ 6 Co. 6.

Tiel service nest
forsque Socage,
&c. But, is it hath been said
the dignity of the person of the
King giveth the name of Pe-
tit Serjeanty, which in case of a
common person should be call'd
plain socage, ab effectu; for it
shall have such effects or inci-
dents as belong to Socage,
and neither Ward nor marri-
age, &c. for they belong to
Knights service.

¶ Of this tenure the great
Charter in the person of the
King saith thus, Nos non ha-
bemus, custodiam hæredis, &c.
reddendo nobis cultellos, sagittas, &c.

Et tel service
nem faciat So-
cage en effect, pur cea
que tel Tenant per
son Tenure ne doit
alter ne faire aucun
chose en son proper p-
son touchant le guerre,
mes de rend & payer
annualiter certain chases
al Rey, sicomme home
doit payer un Rent.

¶ N.B. alicujus parvæ Serjeantie quam tenet de nobis per
servitium, as a man ought to pay
Rent.

And such service is
but such Socage in
effect, because that such
Tenant by his Tenure
ought not to go, nor
do any thing in his
proper person touch-
ing the war, but to ren-
der and pay yearly cer-
tain things to the King,
as a man ought to pay
Rent.

M. g. Chart. cap. 28.
Vide Stat. d. Ward's &
Relevis 28 E. I.

Vide sect. 1.

This sufficient
hath been said be-
fore, saving that
parva Serjeantia is only appro-
priate to this Tenure.

Et nota, q home
ne poit tener per
grand Serjeanty, ne
per petit Serjeanty,
sinon de Roy, &c.

AND note, that a
man cannot hold
by grand Serjeanty, nor
by petit Serjeanty, but
of the King, &c.

Chap. 10.

Tenure en Burgage.

Sect. 162.

Bracton lib. 3. Tract. 2.
Britton fo. 164. Mirror
cap. 2. Sect. 18. Lib. 10. fo.
123, 124. The Mayor of
Lynn cas. 40 Aff. p. 27.
43 E. 3. 32. 21 E. 4. 53.
& 54. 21 H. 7. 15.
2 E. 3 cap. 3.

(b) Bracton lib. 3. fo. 24
Fleta lib. 1. cap. 47.

Burgage, in Latin
Burgagium, is de-
scribed of this word
Burgus, which is
Vicus, Pagus, or Villa, a Town;
and it is called a Burgh, be-
cause it sendeth Burgesses to
Parliament.

¶ Of Burghs, some be incorporate, and some not; and some be walled, and some not.

Tenure en
Burgage
est, iou
auncient

Burgh est, de que le rough is, of the which
Roy est Seignior, & the King is Lord,

Tenure in
Burgage is,
where an
ancient Bur-
gh is, de que le rough is, of the which
Roy est Seignior, & the King is Lord,

(b)

lib.II. Of Tenure in Burgage.

Sect. 163, 364.

I.C.

er que ont Tene- and they that have Te-
nements deins le Burgh nements within the
ignont del Roy leur Borrough hold of the
Tenements, que che- King their Tenements
un Tenant pur son that every Tenant for
Tenement doit payer his Tenement ought to
Roy un certain Rent pay to the King a cer-
er an, &c. Et tel tain Rent by year, &c.
Tenure nest forsque And such Tenure is
Tenure en Socage.

Every City is a Burgh, but every Burgh is not a City
rester. And the termination of this word Burgagium (as before hath been noted) signifieth
e service whereby the Burgh is holden. And of this word (Burgh) two ancient and noble
amilies take their names, viz. de Burgo and de Burgo charo, Burchier.

¶ De que le Roy est Seignior. But it may be holden of another, as by that which F.N.B.64.d:
mediately followeth appeareth.

Sect. 163.

ET mesme le ma-
ner est, lou un
ter Seignior El-
ritual ou temporal
t Seignior de tel
burgh, & les Tenants
Tenements en tel
burgh teignont de
ur Seignior, a payer
escun de eux un an-
ual Rent.

AND the same
manner is, where
another Lord Spiritual
or Temporal is Lord
of such a Burrough, and
the tenants of the Te-
nements in such a Bur-
rough hold of their
Lord, to pay each of
them yearly an annu-
al Rent.

was in former time taken
for those Companies of ten fa-
milies which were one ano-
thers pledge, and therefore a
pledge is in the Saxon tongue
Borhoe, whereof some take it
that a Burgh came; whereof
also cometh Headborough, ex
Worw head, Capitalis Plegius,
a Chief Pledge, viz. the Chief
man of the Worw, whom Bra-
ston calleth Frithburgus, and
hereof also cometh burghbote,
which, as Flota saith, signifieth
Quietanciam reparacionis mu-
rorum Civitatis aut Burgi.

+ F.N.B.169.d.
12 Co. Godry. sc. 6
10 Co.173.

; whereof more shall be said
in service whereby the Burgh is holden.

¶ This is evident,
and needeth no ex-
planation: only
this by the way is to be ob-
served, that Bishops, being
Lords of Parliament, have
not been called Lords Spi-
ritual so lately as some have
imagined.

16 Co.2.cap.5;
1 H.4.cap.2. &c.

Sect. 164.

ET est appell te-
nure en burgage,
ceo que les Tene-
ments deins le Burgh
nt tenus del Seign-
or del burgh p cer-
taine rent, &c. Et est
savoire que les an-
ciet villes appelle

AND it is called te-
nure in Burgage,
for that the Tene-
ments within the Bur-
rough be holden of the
Lord of the Burrough
by certain rent, &c.
And it is to wit that
the ancient Towns
called Burroughs be

And it is to be observed, that Burgh and Bury have all one signification. As Canterbury
by Saint Edmond, Sudbury, Salisbury, Banbury, Heytesbury, Malmesbury, Shaftesbury,
Teukesbury.

E e

PER certain rent, + F.N.B.172.
&c. By (&c.) here
is implied Fealty, or other
service, as to repair the house
of the Lord, &c.

¶ Les ancient vil-
les appelle Burghs.

So as a Burgh is an an-
cient Town holden of the
King or any other Lord
which sendeth Burgesses to
the Parliament.

As Canterbury
Malmesbury, Shaftesbury,
Teukesbury.

Teukesbury, and others, send Burgesses to the Parliament. Vide pro Villis, Parochiis & Hamlettis postea, Sect. 171.

8 Co. 121.

Lamb. fol. 125.

ICities. Civitas: whereof cometh the word City. A City is a Borough incorporate, which hath or hath had a Bishop: And though the Bishoprick be dissolved, yet the City remaineth.

In the time of William the Conquerour it is declared in these words, Item nullum mercatum vel forum sit, nec fieri permittatur, nisi in Civitatibus regni nostri, & in Burgis clausis & muro vallatis, & castellis, & locis tutissimis, ubi consuetudines regni nostri, & jus nostrum commune, & dignitates coronæ no-

stræ, quæ constituta sunt a bonis prædecessoribus nostris, deperire non possunt, nec defraudari, violari, sed omnia rite & per judicium & justitiam fieri debent: & ideo castella & burgi & civitas sunt & fundatae & ædificatae, scilicet ad tuitionem gentium & populorum regni, & ad defensionem regni, & idcirco observari debent cum omni liberate, & integritate, & ratione. So as by it appeareth, that Cities were instituted for three purposes. First, Ad consuetudines regni nostri, & jus nostrum commune, & dignitates coronæ nostræ conservand'. 2. Ad tuitionem gentium & populorum regni. And thirdly, Ad defensionem regni. For conservation of Land whereby every man enjoyeth his own in peace: for tuition and defence of the Kings Subjects, and for keeping the Kings Peace in time of sudden uproars: and lastly, for defence of the Realm against outward or inward hostility.

Civitas & Urbs in hoc differunt, quod incolæ dicuntur civitas, urbs vero complectitur ædificia but with us the one is commonly taken for the other. Villeins font cultivers de fiefs deman- rants in villages upland; car de ville est dit villeine, & de Borough Burgesse, & de cite citizens.

Every Borough incorporate that had a Bishop within time of memory is a City, alia the Bishoprick be dissolved; as Westminster had of late a Bishop, and therefore it yet remaineth a City. The Burgh of Cambridge, an ancient City, as it appeareth by a judicial Recop (which is to be preferred before all others) where Mos civitatis Cantabrigiae is found by the act of 12. men the recognitors of that assize: whitch(omitting many others) I thought good mention, in remembrance of my lobe and duty Almae Matri Academiae Cantabrigiae.

There be within England two Archbishopricks, and 23 other Bishopricks; therfore many Cities there be: and Cambridge and Westminster being added, there are in all 27. Cities within this Realm, and may be more then at this time I can call to memory.

It is not necessary that a City be a County of it self, as Cambridge, Ely, Westminster, & are Cities, but are no Counties of themselves, but are part of the Counties where they be.

ICounties. Oz Shires; the one taken from the Saxon, the other from the Latin Comitatus. Counties are certain circuits or parts of the Kingdom into which the whole Realm was divided for the better government thereof, so as there is no land but is within some county. And every of them is governed by a yearly Officer which we call Shrieve. Which name is compounded of thele two Saxon words, Shire and Reve, (i) præfatus, or Præfector Comitatus. But hereof more hereafter in his proper place shall be spoken. There be in England 41 Counties, and in Wales twelve.

Lib. 10 fol. 113. 124.
Vide d. v. ant Sect. 97.
4 Inst. 150.

IReignont les Burgesse al Parliament, &c. Parliament is the highest and most honourable and absolute Court of Justice of England, consisting of the King, the Lords Parliament, and the Commons. And again, the Lords are here divided into two sortes, viz. Spiritual and Temporal. And Commons are divided into three parts, viz. the Knights of Shires or Counties, Citizens out of Cities, and Burgesse out of Boroughs. The words of the Writ to the Sheriff for the election being, Duos milites gladiis cinctos, & gis idoneos & discretos comitatus tui, & de qualibet civitate comitatus tui duos cives, & quilibet

Burghs sont les plus anciennes villes qui sont dans l'Angleterre; car ces villes que nous appelleons now be Cities or Towns, in old time were Boroughs, and called Boroughs, for of such old Towns called Boroughs come the Burgesse of the Parliament to the Parliament, when the King hath summoned him to the Parliament.

Lib. II. Of Tenure in Burgage. Sect. 164. 110

uilibet Burgo duos Burgenses de discretioribus & magis sufficientibus, &c. All which have vot= s and suffrages in Parliament. You shall read in the Parliament Rolls, that (as hath been said) there is Lex & consuetudo Parlamenti, quæ quidem lex quærenla est ab omnibus, igno= tra multis, & cognita a paucis. Of the members of this Court some be by descent, as ancient V d. S. & t. 3. noblemen; some by creation, as Nobles newly created; some by succession, as Bishops; f. 8 Co. 1. one by election, as Knights, Citizens, and Burghers.

It is called Parliament, because every member of that Court should sincerely and discreetly parler la ment for the general good of the Common=wealth. Which name it hath also in Scotland. And this name before the Conquest was used in (a) the time of Edward the Confessor, Vill. the Conqueror, &c. It was anciently before the Conquest called Michel Sinoth, Michel Promote, ealso Witenage mote, that is to say, the great Court or Meeting of the King and of the wise men; sometime of the King with the Council of his Bishops, Nobles, and Prelates of his people. This Court the Frenchman calleth Les Estate, or Lassembie des Estates. In Germany it is called a Diet. For those other Courts in France that are called Parlia= ments, they are but ordinary Courts of Justice, and (as Paulus Jovius affirmeth) were first established by us.

The King of England is armed with divers Councils, one whereof is called Commune Dr. & Stud. 154. concilium, and that is the Court of Parliament; and so it is legally called in Writs and ju= Plow. 198. 1. Inst. 105. trial proceedings Commune Concilium Regni Angliae. And another is called (b) Magnum Con- 179. 1. 4 Inst. 13. cium: this is sometime applied to the upper house of Parliament and sometime out of Parliament time to the Peers of the Realm, Lords of Parliament, who are called Magnum Con- (b) Br. Et. lib. 1. cap. 1. Regist. 250. cium Regis. For the proof whereof take one (c) Record for many in the fifth year of King (c) 27 Aug. 5 H. 4. + 4 Co. 130. Edward, at what time there was an exchange made between the King and the Earl of Northumb= bergh, whereby the King promiseth to deliver to the Earl lands to the value, &c. Per advise & assent estates de son Realme & de son Parliament, (parenst q) Parliament soit devant le feast de St. Lucy, auerment per advice de son graund Council, & autreis Estates de son Realme que le Roy fer= assembler devant le dit feast, in case que le Parliament ne soit. And herewith agreeth the Act Parliament in 37 E. 3. cap. 18. Where it is said, before the Chancellour, Treasurer, and Councill. Thirdly, (as every man knoweth) the King hath a Privy Council for mat= tress of State, (as for example) (d) Henricus de Bello monte Baro, de magno & de privato Concilio (d) In Dors Claus. egis juratus: and many others before and after. The fourth Council of the King are 16 E. 2 M. 5. Judges of the Law for Law matters, and this appeareth frequently in our (e) Books, 1. 4 Inst. 12. d must be intended: when it is spoken generally by the Council, it is to be understood Se= ndum subjectam materiam; for example, if it be legal, then by the Kings Council of the w, viz. his Judges.

Now for the antiquity of this high Court of Parliament, whereof Littleton here speaketh, appeareth that divers Parliaments have been holden long before and until the time of the Conqueror, whitch be in Print, and many more appearing in ancient Records and Manu= pts (f) Le Roy Alfred assembler'les Counties, &c. & ordeina per usage, perpetual, que deux foix. an ou plus sovent pur mister in temps de peace se assemblerent a Londres a Parlementer, sui le idement del people de Dieu, & coment soy garderont de pecher, viveront en quiet, & receveront fit per usage & sanits judgments per ceste estate, se fieront plusors ordinances per plusors Rœys que a temps le Roy que ore est, que fuit le Roy E. I. The conclusion of that great Parliament held by King Athelstan at Grately is very remarkable, whitch I have seen in these words: this was enacted in that great Synod or Council at Grately, whereat was the Archbishop Wolfe, with all the Noblemen and wise men which King Athelstan called together.

There have been in the time of, and since the Conquest, in the regn of H. I. King Stephen, 2. R. I. King John, H. 3. &c. 280. Sessions of Parliament, and at every Session divers Mirr. c. 2. Sect. 4, 7, 10, 14. is of Parliament made, no small number whereof are not in print. ea. 4 de defaults, & cap. The jurisdiction of this Court is so transcendent, that it maketh, enlargeth, diminisheth, de Homicide cap. 1. S. & Q. agateth, repealeth, and reviveth Laws, Statutes, Acts and Ordinances, concerning mat= 1. 3. cap. 4 de Peyns. Ockam quid cum Ven= tis Ecclesiastical, Capital, Criminal, Common, Civil, Martial, Maritime, and the rest. Matth. Pat. 212, 213. tice can begin, continue, or dissolve the Parliament but by the Kings Authority. Of which + F N B. 229. b. irt it is said, (a) Que il est de tresgrand honor & justice, de que nul doit imaginer chose dishon= (a) Pl. Com. 398. b. able. (b) Habet Rex Curiam suam in Concilio suo in Parlementis suis, præsentibus Prælati, Doct. and Stud. cap. 55. mitibus, Baronibus, Proceribus, & aliis viris peritis, ubi terminatæ sunt dubitationes judiciorum, fol. 164. novis injuriis emersis nova constituuntur remedias, & unicuique justitia prout meruerit retribue= (b) Fleta lib. 2. cap. 2. Fortescue de laudib. ibidem. But this properly doth belong to the Jurisdiction of Courts, and therefore this legum Anglie. Bracton. de taste hereof shall suffice. lib. 1. cap. 2. + Dr. & Stud. 32.

Lib.II. Cap. X. Of Tenure in Burgage. Sect. 165, 166.

Sect. 165.

Customes & usages. Consuetudo is one of the main triangles of the Laws of England, those Laws being divided into common Law, Statute Law, and Custom. Of which it is said,

* that Consuetudo quandoque pro lege servatur, in partibus ubi fuerit more utentiu' approbat, & vicem Legis obtinet; longævi enim temporis usus & consuetudinis non est vilis authoritas.

(c) Longa possessio (sicut jus) parit jus possidendi, & tollit actionem vero domino.

Of every Custom there be two essential parts, Time and Usage; Time out of mind, (as shall be said hereafter) and continual and peaceable usage without lawful interruption.

Item p^{re} le grein- der part tiel burghes ont divers customs & usages que nont pas auters villes. Car ascuns burghes ont tiel custom, que si home ad issue plusors fits, & morut, le puisne fits enheriter touts les tenements que fuēt a son pere deus in le burgh, come heire a son pere, per force de custom. Et tiel custom est appell Burgh English.

Also for the greater part such Bo. roughs have divers customs and usages which be not had in other Towns. For some Bo. roughs have such a custom, that if a man have issue many sons, and dieth, the youngest son shall inherit all the Tenements which were his Fathers within the same Borough, as heir unto his Father, by force of the custom: the which is called Borough English.

* Doc. Pla. 104.

* 5 Co. 84.

(* 44 E. 3. 33. 40 Ass. 4.

27. 4. 21. E. 4. 54. 43 E.

a. 32.

(d) 21 E. 4. 53. 54.

* 6 Co. 59.

(* 21 E. 4. 54. 15 E. 4. 29

xi H. 7. 14. 44 E. 3. 18.

21 H. 7. 40.

* 1 Cro. 419. 441.

(e) Bracton lib. 4. 271.

34 E. 1. dicitur 60. 37 E.

2. continet 58. 3 E. 3. pct.

156. 30 E. 3. 25. 39 E. 3.

6. 9. 10. 31 E. 3. render

6. 17 E. 3. 27 21 E. 4. 28.

22 E. 4. 8. 7 E. 3. 51.

30 E. 3. 23. 34 H. 8. Dier

54. F. N. B. 122. 5 E. 3.

tresp. 13.

Vid. Glanvill lib. 7. cap.

3. 9.

Que nont pas auters villes. It is necessary to be known what customs may be alledged in an upland town which is neither City nor Borough. * In an upland town there is neither City nor Borough such a custom to devise Lands cannot be alledged; neither in an upland town can there be a custom of Borough English or Gavelkind: but these are customs which may be in Cities or Boroughs. (d) Also if Lands be within a Manor, fee, or Feigniorp, the same by the custom of the Manor, fee, or Feigniorp, may be devisable, of the nature of Gavelkind, or Borough English. * But an Upland Town may alledge custom to have a way to their Church, or to make By-laws for the reparations of the Church, the well-ordering of the Commons, and such like things. And it is to be observed that in special cases a custom may be (e) alledged within a Hamlet, a Town, a Burgh, a City, a Manor, an Honour, an Hundred, and a County: but a custom cannot be alledged generally within the Kingdom of England, for that is the Common Law.

Q Le puisne fits ex herita. And yet by some customs the youngest Brother shall inherit; for Consuetudo loci est observanda.

Q Tous les terres ou tenements. Either in Fee-Simple, Fee-tail, or any other inheritance. If Land of the nature of Borough English be letten to a man and his heirs during the life J. S. and the lessee dieth, the youngest son shall enjoy it.

Q Borough English. So called, because this custom was first (as some hold) in England.

Sect. 166.

Bra. lib. 4. tra. 6. cap.
13 F. N. B. 150. e. Pl.
Com. 4. 13.
* 8 Co. 121. * Ante 33.

And this is called Frankbank, Francis bancus. Consuetudo est in partibus illis, quod uxores maritorum defunctorum habeant francum bancum suum de terris Sockmannorum tenent nomine dotis.

Item en ascun burghes per le custome feme avera pur sa dower touts les tenement que furent a son baron, &c.

Also in some Bo. roughs by custom the wife shall have for her dower all the Tenements which were her husbands.

¶ Que fueront a sa baron, &c. Here is implied by (&c.) that in some places the wife ^{F.N.B.150.} shall be the motey of the lands of her husband so long as she lives unmarried, as in Gavelkind ^{+ 33 A.ite.} And of lands in Gavelkind a man shall be Tenant by the Courtesy without having of issue. In some places the widow shall have the whole, or half, dum sola & casta vixerit, ^{+ 10 E.2. side 129.} to the like.

Sect. 167.

I Tem en ascuns Burghs per le stome hōe poit de- ser per son testa- ment ses terres & te- ments que il ad en e simple diens mes- se burgh al temps s moyant ; & per ce de tiel devise , iuy a que tiel De- se est fait , apres le oit le devisor , poit ter en le tenemnts int a luy devises , a per & tenet a luy so- nque la form & effect il devise , sans ascun serie de seisin destre it a luy , &c.

A lso in some Bo- roughs by the cu- stom a man may de- vice by his Testament his Lands and Tene- ments which he hath in Fee simple within the same Borough at the time of his death ; and by force of such Devise, he to whom such De- vice is made, after the death of the Devisor, may enter into the Te- nements so to him de- vised, to have and to hold to him after the form and effect of the devise without any li- very of seisin thereof to be made to him, &c.

¶ Ses terres ou tenements. And by the same custom he may devise a Rent out of same Lands and Tenements.

¶ Que il ad en fee simple. For Lands in tail are not devisable by Will, and therefore in this place necessarily added (que il ad en Fee simple,) and purposely omitted the same in clause concerning Borough English, because there an estate tail is included.

¶ Poer enter. Note, the custom of a City or Borough concerning the devise of Lands Quod licet unicuique civi sive burgensi, &c. ejusdem civitatis sive burgi, tenementa sua in eadem citate sive burgo in testamento suo in ultima voluntate sua tanquam catalla sua legare cuicunque querit, &c. (p) Now if a man deviseth either by special name or generally, Goods or Chattels real or personal, and dieth, the Devisee cannot take them without the assent of the Executors. But when a man is seised of Lands in fee, and deviseth the same in fee, in tail, for ^{7 19.} years, the Devisee shall enter; for in that case the Executors habe no medling there- ^{(q) 4 Mar. Br. tit. devis. 43.} th. And in the case of a devise by Will of lands, whereof the Devisor is seised in fee, the chold or interest in Law is in (q) the Devisee before he doth enter, and in that case nothing (having regard to the state or interest devised) descendeth to the heir. But if the heir of Devisor entreteth, and holdeth the Devisee out, he may either enter, as Littleton here saith, or be his writ called Ex gravi querela : and this writ (without any particular usage) is inci- ^{(1) Regist. fol. 244.} nt to the custom to devise; for otherwise if a dissent were cast before the Devisee did enter, the Devisee should have no remedy. After an actual possession this Writ lieth not, for then ^{+ Post. 240 b.} the Devisee may have his ordinary remedy by the Common Law.

D Eviser. This is ^{+ 5 Co. 73. b. + 1 Co. 85. a} a French word; and ^{86. b.} signifieth sermoci. ^{+ Post. 322. b.}

nari, to speak, for testamentum est testatio mentis, & index animi sermo. So as a deviser per son testament is to speak by his Testament what his mind is to have done after his decease.

¶ Per son testament.

Testamentum est (m) duplex, 1. In scriptis, 2. Nuncupativum, seu sine scriptis. And in some Cities and Boroughs lands may (n) pass as Chattels by will nuncupative or parol without writing. Revera (o) terminatum est quod potest le ^{(n) Britton f. 164. 212. b.} Ficta lib. 5. cap. 5. & lib. 2 gari ut catallum tam haereditas ^{(o) Bracton 14 fol. 272.} cap. 50. quam perquisitum per Barones London & Burgenses Oxon. Ideo verum est quod in Burgis non jacet assisa mortis antecessoris. But in Law most com- monly, Ultima voluntas in scriptis is used where Lands or Tenements are devised, and Testamentum when it concerneth Chattels.

(m) Vide Sect. 586.

⁽ⁿ⁾ Britton f. 164. 212. b.
+ 10 Co. 46. + 8 Co. 34.
(o) 2 H. 6. 16. 27 H. 6. 8.
2 E. 4. 13. 21 E. 4. 21. 4 H.

4 E. 3. 53. 7 H. 6. 1. 14 H.
8. 5. 22 Ass. 78. Abbr. Ass.
118. b. 4 E. 2 mordane.
39 49 E. 3. 17 F.N.B. 196
21 H. 6. 38. a. 7 E. 2. tit.
mordane.

F.N.B. 199. Reg. in ex-
gravi Querela.
+ 10 Co. 46. + 8 Co. 34.
(p) 2 H. 6. 16. 27 H. 6. 8.
2 E. 4. 13. 21 E. 4. 21. 4 H.

+ 1 Leon. 30. + Plow.
485.
(q) 4 Mar. Br. tit. devis. 43.
(1) Regist. fol. 244.

39 Ass. pl. 6. 3 E. 3. devise
12. 29 Ass. 3. 1. 34 E. 3. tit.
Formedon, pl. post. 30 H.
8. devise 28. F.N.B. 198.
199. &c. Britton f. 212. b.
+ Post. 240 b.

+ Cro. Car. 201.
+ Cro. Car. 369.

+ 6 Co. 23. + Cro. Car.

447. + Sid. 191. + Rol. 67

+ 5 Co. 68.

(f) 27 H. 8. cap. 10.
Britton f. 212.78.b.164.
Vide before in this Sect.
32 H. 8.ca.2.24 H. 8.ca.5
† F.N.B. 441.
(t) vid.lib. 2.fo. 25. &c.
In Butler & Baker's case
Lib. 6. fol. 16. & 76.
Lib. 8.f. 84.85.lib. 9. 133.
Lib. 10.82,83.84.lib. 11
fol. 2.Lib. 1. fol. 25 a.
† 1 Co. 120. 1 Sid. 55.
‡ 3 Co. 119.
(u) Dier 4 & 5 Ph. & M.
x 55. An 6 Eliz. Dallison.
Pasch. 20 Eliz. between
Barber and his wife
Plaintiff, and William
Long Defendant, in a
Writ of partition.
Bendoes adjudg.
9 Co. 133.
(x) Lib. 6. fol. 17. 18.
Sir Edw. Cleres case.
Lib. 3. fol. 34 b Butler
and Baker's case.
Lib. 10.80,81.
Leon. Lovoye case.
Leon. Lovoye case, and
Butler and Baker's case,
ubi supra.
† 6 Co. 23.
† 5 Co. 66 Cro.Cir. 37.
38. 40. 44 Co. 70.

* Sid. 56.
Leon. Lovoye case, ubi
supra, fol. 81.
† 4 Co. 81.

Lib. 8. fo. 84,85.Sir Ri-
chard Pexhals case.
Lib. 3. fol. 33. Butler and
Baker's case.
Lib. 6. fol. 17, 18, in Sir
Edw. Cleres case.
† 1 Co. 120. † 6 Co. 16.
75. † Co. 66. 48 Co. 163
173. 14 Post. 271.
† 1 Cro. 39.

And well said Littleton, that Lands and Tenements were debitable in Burghs by custom, for that (f) at the Common Law no Lands or Tenements were debitable by any last Will and Testament, nor ought to be transferred from one to another, but by solemn liberty of less matter of record, or sufficient writing: but as Littleton here saith, by certain private customs in some Burghs they are debitable. But now since Littleton wrote by the Statute of 32 and 34 H. 8. Lands and Tenements are generally debitable by the last Will in writing of the Tenant in Fee Simple, whereby the ancient (t) Common Law is altered, whence on many difficult questions, and most commonly disinherition of heirs, (when the Devisees are pinched by the Messengers of death) do arise and happen. But (u) these Statutes notwithstanding the custom to devise, whereof Littleton speaketh: so though Lands debitable by custom be holden by Knights service, yet may the owner devise the whole land by force of the custom, and that shall stand good against the heir for the whole. But the devise of Land holden by Knights service by force of the Statutes is utterly void for a third, and the same shall descend to the heir. If he hath any Lands holden by Knights Service in Capite, and Lands in Socage, he can devise but two parts of the whole; but if he hold Lands by Knights Service of the King, and not in Capite, or of a mean Lord, and hath also Land in Socage, he may devise two parts of his Lands holden by Knights Service, and all his Socage Lands. If he holds any Lands of the King in Capite, and by act executed in his lifetime he conveyeth any part of his Lands to the use of his wife, or of his children, or payment of his debts, though it be with power of revocation; he can devise by his Will (x) no more to make up the Land so conveyed two parts of the whole. And if the Land so conveyed amount to two parts or more, then he can devise nothing by his Will. But if he hath Land only that holden in Socage, then he may devise by his Will all his Socage Land. So as it is apparent that the benefit of the Lords was more carefully provided for than the good of the husband. But if a man, holding some Land of the King by Knights Service in Capite, convey parts of his Land to the use of his wife for life; now (as hath been said) he can devise no part of the residue, but yet he may by his Will devise the reversion of the two parts so conveyed to his wife: for the intention of the Act is to give power to dispose two parts entirely.

If the Devisee leave a full third part of the land immediately to descend in Fee simple in tail, he may devise the other two parts in fee simple; if a third part be not left, it shall be made up according to the Act. But hereditaments that are not of any yearly value, as bond, catalla felonum & fugitivorum, waifs, estrays, and the like, can neither be left to descend for an part of the third part, or debited as part of the two parts. But yet if such franchises of uncertain value be holden of the King in Capite, they shall restrain the devise of all his Land and make it void for a third part. So it is if a man hath a reversion expectant upon an estate tail, dry and fruitless, holden of the King by Knights Service in Capite; yet that shall restrain him to devise but two parts of his Lands only. And where the Statute speaks of a remainder, it is to be intended only of such a remainder as may draw Ward and Marriage by the Common Law. As if a reversion upon a State for life be granted to one for life the remainder in fee, during the life of the grantee for life it is not within the Statute: but if he die this is such a remainder as is within the Statute, although it be dry and fruitless. If a gift tail or a lease for life be made, the remainder in fee, this remainder in fee is not within the Statute. But if a man hath lands holden by Knights Service in Capite, in possession, rebus or remainder, and is also seised of Socage land, and devise by his Will all his lands, & after setteth away the Capite land, or that land is recovered from him, the Will is good for the whole Socage land. The values both of the third part, and the two parts of the lands, shall be taken as they happen to be at the time of the death of the Devisee, for then his Will takes effect.

He that holds by Knights service in chief debateth by his Will a Rent, Common, or other profit, as shall amount to the value of two parts out of all his lands; this rent立ith only of the two parts, and the third part is free of it. And if he hath lands holden by Knights service, and not in Capite, he may charge two parts of the Knights-Service-lands, as is aforesaid, and all his Socage land, &c. And if he hath only Socage land, he may by his Will charge it at his pleasure, so as the Kings and Lords third part is free, and the heirs two parts charged: and this is only by force of the Statute of 34 H. 8.

If a man make a feoffment in fee of his lands holden by Knights service to the use of such person and persons, and of such estate and estates, &c. as he shall appoint by his Will; in this case, by operation of Law, the use and state vests in the feoffor, and he is seised of a qualified fee. In this case if the Feoffor limit estates by his will, by force, and according to his power, there the uses and estates growing out of the feoffment are good for the whole, and the last Will is but directory. But in this case if the feoffor had devised the lands (as owner thereof) without any reference to the feoffment, and power thereby given then taking effect by the Will, it is void for a third part. But if he had formerly conveyed two parts to the use of his wife, &c. and after devised the residue by his Will without any reference to his power by the feoffment,

ffement, yet this Will shall enure to declare the use upon the feoffment, because he had no power as owner of the land to devise any part of it. But if the feoffment had been made to the use of his last Will, although he devised the land with reference to the feoffment, yet it taketh effect only by the Will, and not by the feoffment. All which, and many other points of intricate and abstruse learning, you shall more largely read in my Reports. ^{+ 1 Co. 120. + 6 Co. 17. 18.}
^{+ Mo. 280.}

¶ *Sans aucun liverie de seisin destre fait a luy, &c.* For in his Life ^{40 Aff. 32.} the Liberty of seisin could not be made, because his Will is ambulatory till his death, and no man passeth during his life, neither can Liberty be made after his decease, for then it cometh late. Here (&c.) implieth that the devise is good without any Atturment of any Lessee or Tenant.

Sect 168.

N^ota, comment q^{ue} home ne poit anter ne doner ses tenements a sa femme tant le coverture, et ceo que sa femme & p^{re}ne sont fors^{ez} un person en Ley, uncouste tel custome il poit viser per testament ses tenements a sa femme, a aver & tener a y en Fee simple, ou Fee tail, pur terme s^{ans}; pur ceo que il devise ne pris^{ez} est fors^{ez} apres la mort Devisor; car touts devises ne preignont es-
torsque apres la mort le devisor. Et si me fait a divers temps divers testaments divers devises, &c. une le varreindevise & lult fait p^{re} luy estoie, & lautes sot voides.

¶ *Un person en Ley.* Vir & uxor sunt quasi unica persona, quia caro una, & sanguis unus: res licet sit propria uxor, vir tamen ejus custos, cum sit caput mulieris. If Cestuy que use had devised that his wife should sell his land, and made her Executrix, & died, and she took another husband, she might sell the land to her husband, for she did it auer droit, and her husband should be in by the Devisor.

¶ *Per testament.* Testamentum is (as is said before) Testatio mentis, and is favou- rably

A^{lso} though a man may not grant nor give his Tenements to his Wife, during the coverture, for that his Wife and he be but one person in the Law, yet by such custom he may devise by his Testament his Tenements to his Wife, to have and to hold to her in Fee simple, or in Fee tail, or for term of life, or years; for that such Devise taketh no effect but after the death of the Devisor. And if a man at divers times makes divers Testaments and divers devises, &c. yet the last Devise, & Will made by him shall stand, and the other are void.

¶ *H*ome ne poit granter ne donner ses tenements a sa femme, &c. This opinion is (a) clear, for by no conveyance ^{(a) 4 H. 7.} at the Common Law a man could, during the coverture, either in possession, reversion, or remainder, limit an estate to his wife. But a man may by his deed covenant with others to stand sealed to the use of his wife, or make a feoffment or other Conveyance to the use of his wife: & now the stateis executed to such uses by the Stat. (b) of 27 H. 8. for an ^{(b) 27 H. 8. cap. 10.} use is but a trust and consti- ^{+ 10 Co. 46.} dence which by such a mean ^{+ 2 Rot. 788.} might be limited by the husband to the wife. But a man cannot covenant with his wife to stand sealed to her use: because he cannot covenant with her, for the reason that Littleton here yieldeth.

¶ *Durant le cov- ture.* That is, during the continuance of the marriage. Soz to cover in English, is Tegere in Latin, and is so called, for that the wife is sub potestate viri, and she is disabled to contract with any without the consent of the husband. (c) Omnia quae sunt uxoris sunt ipsius viri: non habet uxor potestatem sui, sed vir.

^{+ 4 Co. 51. b.}
^{(c) Bracton lib. 2. cap. 15}
Idem, l. 5. tract. 5. cap. 25.
^{+ 1 Roll. 329. + 3 Co. 12.}
^{+ Dr. & Stud. 35.}
^{10 H. 7. 20.}
^{+ 185 Hob. 2. + 2 Rot. 68}
^{+ Plow. 158. 414.}
^{+ 1 Rot. 835. + Plow.}
^{523. a. + Cro. Cat. 129.}

rably to be expounded according to the meaning of the testator. In contractibus benignis, in testamentis benignior, in restitutionibus benignissima interpretatio facienda est.

(d) 4 E.2. tit. Devise 23

(e) 44 Ass. p. 36.

44 E.3. 33. 18 E.3. 8.

(f) Britton 264.

‡ 3 Co. 19.

¶ A son feme. And Littleton himself yieldeth the reason, (d) because the devise doth not take effect till after the decease of the Devisor. And in some (e) places the custom is general, that he may devise any land, &c. In some (f) place Lands bny whitch the Devisor purchaseth. In some places he may devise any estate. In some places for life only, &c.

But albeit the last Will doth not take effect until after his decease, yet if a Feme Covent seized of lands in fee, she cannot devise the same to her husband, because at the making of her Will she had no power, being sub potestate viri, to devise the same, and the Law intendeth it should be done by coercion of her husband.

¶ Divers testaments. For Voluntas Testatoris est ambulatoria usque ad mortem, (as hath been said before) and the latter Will doth countermand the first. And it is truly said, that the first Grant and the last Will is of the greatest force.

¶ Divers devises, &c. Here by (&c.) is to be understood as well devises of Chattels real or personal, as of freehold and inheritance. Also that in one Will where there be divers devises of one thing, the last devise taketh place. Cum duo inter se pugnantia reperiuntur in testamento, ultimum ratum est.

Sect. I 69.

¶ De ses Executores poient aliener ou vender ses tenements. And that whitch in Littleton's time a man might do by Custom in some particular places, he may do by the Statutes of 32 & 34 H. 8, generally.

32 H.8 cap. 2.
34 H.8 cap. 5.
29 Co. 75.
26 Co. 16.

49 E.3. 16. 29 Ass. 17.
39 Ass. 17. 9 H.6. 24. 15
H.7. 12. 21. 14 H.8. 6.
30 H.8 tit. Devise Br. 31
2 Euz. Dier. 177.
‡ 1 Rol. 328 ‡ 1 Co.
177 † Mo. 61. 62. 147.
† 1 Cio. 382. 4 2 Leon.
220.

¶ Les Executors apres le mort lour testator poient vender. Here it appeareth, that the Executors having but a power; as Littleton putteth the case, to sell, they must all joyn in the sale. Then put the case that one dies, it is regularly true, that being but a bare authority, the survivors cannot sell. But if a man deviseth his land to A. for term of life, and that after his decease his lands shall be sold by his Executors generally, (as Littleton here putteth his case,) and make three or four Executors, during the life of A. one of the Executors dies, and then A. dieth, the other two or three Executors may sell, because the land could not be sold before, and the plural number of his Executors remain. But if they had been named by their names, as by J. S. J. N. J. D. and J. G. his Executors,

¶ Item p tel custome home post deviser per son testament, que ses Executours poient aliener & vender ses tenements que il ad en Fee simple p certaine summe de money, a distribuer p son alme. En cest cas, comment que le devisor devie lessie de les tenements, & les tenements descendent a son heire, uncoze les Executours apres le mort lour testator poient vender les tenants issint a eux devises, & ouste le he, & ent faire feoffement, alienation, & estate p fait, ou sas fait, a eut a queux l vend est fait. Et issint poys deier icy u cas ou home post faire lotal estat, & uncoze il n'avoit riens en

A lso by such custome from a man may devise by his Testament, that his Executors may alien and sell the Tenements that he hath in Fee simple of a certain sum, to distribute for his Soul. In this case though the devise dic seised of the tenements, and the tenements descend unto his heir, yet the Executors after the dead of the Testator may sell the Tenements so devised to them, and put out the heir, & thereof make a feoffment alienation, and estate by Deed, or without deed, to them to whom the sale is made. And so may ye here see case where a man may make a lawful estate

ib.II. Of Tenure in Burgage. Sect. 170. 113

Tenements al and yet he hath nought
mps del estate fait. in the tenements at the
le cause est, pur time of the estate made.
que la custome & And the cause is, for
ge ad este tiel. that the custom and
ua consuetudo ex usage is such. For a cu-
ta causa rationabili stom used upon a certain
tata privat Commu- reasonable cause depri-
m Legem.

g five sons in law; one of his sons in law died in the life of the Donee, and after the Donee died without issue, and then the four of the sons in law sold the land: and it was adjudged the sale was good, because they were named generally by his sons in law, and the Lands do not be sold by them all. And the words of the Will, in a benign interpretation, are satisfied in the plural number, albeit they had but a bare authority: but if they had been particularly named, it had been otherwise. But if a man devileth lands to his Executors to be sold, maketh two Executors, and the one dieth yet the survivor may sell the land, because as the so the trust shall survive: and so note the diversity between a bare trust, and a trust cou- with an interest. In both these cases the Executors may (a) sell part of the land at one, and part at another, as they may find purchasers.

In Littleton's case admit that one Executor had refused to sell, then (as the Law stood when Littleton wrote) it was clear that the others could not sell: but now by the Statute (b) of H.8. it is probed, that where lands are willed to be sold by Executors, that though part of the lands are refused, yet the residue may sell. And albeit the letter of the Law extendeth only where Executors have a power to sell, yet being a beneficial Law, it is by construction extended to lands devised to Executors to be sold. Yet in neither of those cases, albeit one re- can the other make sale to him that refused, because he is party and privy to the last, and remains Executor still. Mine advice to them that make such devises by Will is, take it as certain as they can; as that the sale be made by his Executors, or the Survivor, or survivor of them, if his meaning be so, or by such or so many of them as take upon the probate of his Will, or the like. And it is better to give them an Authority than state, unless his meaning be they should take the profits of his Lands in the mean time, then it is necessary that he devileth, that the mean profits till the sale shall be assets in his hands, for otherwise they shall not be so. But hereof thus much shall suffice.

Et ent faire feoffment. For albeit the Executors in this case have no estate or rest in the Land, but only a bare and naked power, yet this Feoffment amounteth to an alienation, to vest the Land in the Feoffee, as it appeareth here, and the Feoffee shall be in the Devisee.

Per fait ou fauns fait. And therefore if by the custom a man devileth that a Rec- ion, or any thing that lieth in grant, shall be sold by the Executors, they may sell the same out Deed, for the Vendee shall be in by the Devisee, and not by the Executors, as hath said.

Consuetudo ex certa causa rationabili usitata privat communem legem. consuetudo contra rationem introducta potius usuratio quam consuetudo appellari debet. suetudo prescripta & legitima vincit legem.

Privat communem legem. For no custom or prescription can take away the force of Parliament, and therefore Little. materially speaketh here of the Common Law.

Sect 168.

Ecnota que nul custome est al- **A**nd note, that no custom is to be allowed, mesque tiel allowed, but such cu- som que ad este use ston as hath been used

F f

then in that case the surviv-
ors could not sell the same
because the words of the Ce-
stator could not be satisfied.

And I my self knew this case
adjudged *: A special Ver-
dict was found, that A. was
seised of certain lands in
Fee, and devised the same in
tail, and if the Donee died
without issue, that his said
Land should be sold by his
sons in law, he in tru h ha-

^{† 1 Co. 173.}
^{* Hill, 26 Eliz. Inter Vinc.}
^{& Lee, in the King's}
^{Bench.}
^{+ Cro. Eliz. 26. † 1 Leon.}
^{28. † 1 Cro. Car. 37.}
^{+ M. 147}
^{+ S. Co. 63. † Cro. Car.}
^{352. † 1 Rol. 328.}

the sale was good, because they were named generally by his sons in law, and the Lands do not be sold by them all. And the words of the Will, in a benign interpretation, are satisfied in the plural number, albeit they had but a bare authority: but if they had been particularly named, it had been otherwise. But if a man devileth lands to his Executors to be sold, maketh two Executors, and the one dieth yet the survivor may sell the land, because as the so the trust shall survive: and so note the diversity between a bare trust, and a trust cou- with an interest. In both these cases the Executors may (a) sell part of the land at one, and part at another, as they may find purchasers.

^{30 Ass. p. 17. 4 Eliz. Dier.}
^{210. 23. Eliz. Dier. 37. †}
^{Pater. 22 Eliz. Not 15. or}
^{in Common Bench, and}
^{so resolved in Vincents}
^{case.}
^{+ S. d. 6. † Post. 181 b,}
^{236 a. 315 b}
^{(a) ib. 1 fol. 173. in}
^{Digge case.}
^{(b) 21 H. 8. cap. 4.}

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^{+ 1 Leon. 60.}
<sup>Tc. 27 H. 8. in the Com-
mon Pleas, Serjeant
Bendicks report.</sup>
^{+ 4 Leon. 35. † 1 Rol.}
^{329. † Post. 286 a.}
^{+ 1 Leon. 87. 225.}
^{+ Hob. 32. † 9 Co. 77 a.}
^{49 H. 3. 16. 38 Ass. 3.}
^{+ 1 Leon. 31. † 5 Co. 66.}
^{+ 8 Co. 121.}

Et ent faire feoffment. For albeit the Executors in this case have no estate or rest in the Land, but only a bare and naked power, yet this Feoffment amounteth to an alienation, to vest the Land in the Feoffee, as it appeareth here, and the Feoffee shall be in the Devisee.

Per fait ou fauns fait. And therefore if by the custom a man devileth that a Rec- ion, or any thing that lieth in grant, shall be sold by the Executors, they may sell the same out Deed, for the Vendee shall be in by the Devisee, and not by the Executors, as hath said.

Consuetudo ex certa causa rationabili usitata privat communem legem. consuetudo contra rationem introducta potius usuratio quam consuetudo appellari debet. suetudo prescripta & legitima vincit legem.

Prescription. Prescription is a title taking his substance of use and time allowed by the Law; Prescriptio est titulus ex usu & tempore substantiam capiens

‡ 4 Co. 36.

† 6 Co. 60. a. 65. b. 66.
 12 E. 4. 1. 2 Mariæ, Br.
 Prescr. 100. 6 E. 6. Dier
 71. 34 E. 3. Bar. 277. 43 E.
 3. 32. 7 H. 6. 26. 22 H. 6.
 14. 16 E. 2. tit. Prescr. 53
 45 Aff. 8. 40 Aff. 27. 41.
 21 E. 4. 53, 54.
 † 5 Co. 78. b.

‡ 9 Co. 57.
 Bracton fol. 51, 52.

capiens ab authoritate Legis. In the Common Law a prescription which is personal is for the most part applied to persons, being made in the name of a certain person, and of his Ancestors, or those whose estate he hath, or of bodies politick or corporate, and their Predecessors; for as a natural body is said to have Ancestors, so a body politick or corporate is said to have Predecessors. And a custom which is local is alledged in no person, but Land within some Mannor or other place. as taking one example for many, J.S. seised of the Mannor of D in fee prescribeth thus: That J. S. his Ancestors, and all those whose estate he hath in the said Mannor, have time out of mind of man had and used to have common of pasture, &c. in such a place, &c. being the land of some other, &c. as pertaining to the said Mannor. This properly we call a Prescription. A custom is in this manner: A Copholder of the Mannor of D. doth plead, that within the same Mannor there is and hath been such a custom time out of mind of man used, that all the Copholders of the said Mannor have had and used to have Common of pasture, &c. in such a waste of the Lord, parcel of the said Mannor, &c. where the person either doth or can prescribe, but alledgedeth the custom within the Mannor. But both to Customs and Prescriptions these two things are incident inseparable, viz. Possession or Usage, and Time. Possession must have three qualities; it must be long, continual, and peaceable, Longa, continua, & pacifica: For it is said, Transferunt dominia sine titulo & traditione per usurpationem, s. per longam, continuam, & pacificam possessionem. Longam, i. per spatium temporis per legem definitum, of which hereafter shall be spoken. Continuam dico, ita quod non ut legitime interrupta

per title de Prescrip- by title of Prescrip-
tion, s. de temps dont tion, that is to say,
memoire ne curt. from time out of
mind. But divers Op-
pinions have been of
time out of mind, &c.
and of title of pre-
scription, which is all
one in the Law. For
some have said, that
time out of mind should
be said from time of
limitation in a Writ
of Right, that is to
say, from the time of
King Richard the first
after the Conquest
as is given by the Sta-
tute of Westmin-
ster the first, for that
Writ of Right is the
most high Writ in
his nature that may
be. And by such
Writ a man may re-
cover his right of the
possession of his An-
cestors of the most an-
cient time that any man
may by any writ by
the Law, &c. And in
much that it is given
by the said Statute
that in a Writ of rig-
none shall be heard to
demand of the Seisin
of his Ancestors of
longer time than of the
time of King Richar-
d aforesaid; therefore
this is proved, that
continuance of posses-
sion, or other customs
usages used after the
same time, is the title o-

int dit, q̄ bien & verity est, que seisin & continuance puis le dit limitation, &c. est un title de prescription, come il avancdit, & p cause bantdit. Mes ils ont st que il est auty un autre title de prescrispion, q̄ fuit a la common ley devant ascun statute de limitation e breve, &c. & ceo fuit ou un custome ou un sage, ou autre chose, d este use de temps ont memory des hōes e curt a le contrarie. Et ils ont dit, que il st probe per le pleder: ou home voit pleder n title de prescription e custome, il dirra q̄ tel custome ad este use e tempore cujus conarium memoria hominum non existit, & ceo est autant a dire, quant tel matter est ledet q̄ nul home aongz en vie ad oye feun proove a le contrary, ne avoit ascun inusans a le contrary. Et entant q̄ tel title de prescription fuit a common ley, & n̄t este p ascun estatute, go il demurt cōe il st a le common ley; le plus tost, entant la dit limitation de iefe de droit est de cyng tempz passe. Ideo

of prescription, &c, and this is certain. And others have said, that well and truth it is, that seisin and continuance after the limitation , &c. is a title of prescripti-
on, as is aforesaid, and by the cause aforesaid. But they have said that there is also another title of pre-
scription, that was at the Common Law before any estatute of Limitation of Writs, &c. and that it was where a custom or usage, or other thing hath been used for time whereof mind of man runneth not to the contrary. And they have said, that this is pro-
ved by the pleading: where a man will plead a title of prescription of Custom , he shall say that such Cu-
stom hath been used from time whereof the memory of men runneth not to the contrary, that is as much as to say, when such a matter is pleaded that no man then alive hath heard any proof of the contrary, nor hath no knowledge to the contrary. And insomuch that such title of Prescription was at the Common Law, and not put out by an estatute, Ergo it abideth as it was at the Common Law ; and the rather, in-
somuch that the said limi-
tation of a Writ of Right is of so long time passed.

Ide quare de hoc. And

Pacificam dico ,quia si contentiosa fuerit, idem erit quod prius, si contentio fuerit justa. Ut si verus Dominus, latim cum intrusor vel disseisor ingreitus fuerit seisinam , nitatur tales viribus repellere, & ex-
pellere, licet id quod inceperit perducere non possit ad effectum,dum tamen cum defecerit diligens sit ad impe-
trandum & prosequen-
dum. Longus usus nec per vim,nec clam, nec precario,&c.

If a man prescr= ^{13 E.4.6.}
beth to have a Rent,
and likewise to take
a Distress for the
same, it cannot be a=
voided by pleading
that the Rent hath
been always paid by
coheirs, albeit it be-
gan by wrong.

TUn title de ^{# Dr. & Stud. 16.}
prescription. ^{+ 5 Co.72. Cro. Car.9c.}

Seing that prescrip-
tion maketh a title, it
is to be seen, first, to
what things a man
may make a title by
prescription without
charter ; and second-
ly, how it may be lost
by interruption.

For the first, as to ^{21 H.6. Prescrip. 44.}
such Franchises and ^{21 E.4.6.1 H. 7.23.}
Liberties as cannot ^{9 H.7.11,20. 7 H.6.45.}
be seized as aforesaid, ^{6 E.3.32.4 2.45 E. 3.2.}
before the cause of ^{2 E.4.26.}
forfeiture appear of
Record, no man can
make a title by pre-
scription, because that
prescription being but
an usage in pais , it ^{+ 9 Co.57, + Doc.Pla.}
cannot extend to such ^{103. + 2 Rol.270.}
things as cannot be ^{* Fleta lib.1. cap.25.}
seized nor had with- ^{Br.1.5.6 & 15.44 All.}
out matter of Record: ^{10.8.49 E.3. Statut Pl.}
as to the goods and ^{Cor.21,51.lib.5.fol.105.}
Chattels of Traitors, ^{+ Post. 283 + Post. 114.a/}
Felons, Felons of ^{195.1.}
themselves, Fugitives ^{+ 2 Rol.265. 114.}
of those that be put ^{+ 2 Rol.265.}
in Exigent , Deo=

¹ 2 Rol. 270. ² 9 Co. 29.
³ 5 Co. 146. ⁴ 2 Rol. 271
⁵ Polt. 19. ⁶ a
⁷ (c) 22 E. 3. Coron. 241.
⁸ H. 7. 11, 20. 18 H. 6 pre-
⁹ scrip. 45. 11 H. 4. 10.
¹⁰ 21 H. 7. 33. 9 E. 4. 12.
¹¹ 39 E. 3. 35. 46 E. 3. 16.
¹² 11 H. 6. 25. F. N. B. 91.
¹³ 1 H. 7. 24. Sect. 6. Pl. Cor.
¹⁴ 38. 44 E. 3. 4. 22 E. 4. 43.
¹⁵ 14. 3 E. 3. Brook pre-
¹⁶ scrip. 57. 44 Ass. Pl.
¹⁷ * 8 H. 6. 16.
¹⁸ (d) 12 E. 4. 16. 32 H. 6. 25.
¹⁹ 12 Eliz. Dier. 288, 289.
²⁰ ²¹ 2 Rol. 271. ²² 2 Sid. 19.
²³ ²⁴ 2 Cro. 155, 156, 454.
²⁵ 11 E. 3. tit. Issue 40.

15 E. 3. tit. Judgm. 133.
¹⁶ 14 E. 3. ibid. 155.
¹⁷ ¹⁸ 1 Co. 57. ¹⁹ Hob. 18.
²⁰ ²¹ 2 Rol. 271. 278. a
²² + Post. 226. a 227. b.

* Mch. 43 & 44 Eliz. in
²³ a Prohibition between
²⁴ Nowel Pl. & Hick. Vi-
²⁵ car of Edmonton De-
²⁶ fendant in the King's
²⁷ Bench.
²⁸ ²⁹ 2 Co. Bishop of Win-
³⁰ ton's Case.
³¹ ³² 6 Co. 69. ³³ 3 Co. 9.
³⁴ ³⁵ 2 Rol. 272.

ner, &c. to make de hoc quare. Et pluscys many other customs and
³⁶ ³⁷ Conservatores of auters customes & usages usages have such ancient
³⁸ the peace, &c.
³⁹ (c) But to Tre-
⁴⁰ ait tiels ancient burghs. Boroughs.

sure Trove, Clatts,
⁴¹ Cittats, Cheek of sea, to hold Pleas, Courts of Leets, Hundreds, &c. Infange thief, Out-
⁴² fange thief, to have a Park, Warren, Royal fishes, as Ethiales, Surgeons, &c. Fairs. Mer-
⁴³ kets, Frankfoldage, the keeping of a Gol, Toll, a Corporation by prescription and the like, a
⁴⁴ man may make a title by usage and prescription only, without any matter of Record. ⁴⁵ Viz:
⁴⁶ Sect. 313. Where a man shall make a title to Landes by prescription.

But it is to be observed, (d) that although a man cannot, as is aforesaid, prescribe in the lan-
⁴⁷ Franchise to have Bona & catalla proditorum, felonum, &c. yet may they and the like be ha-
⁴⁸ obliquely or by a mean by prescription. For a County Palatine may be claimed by prescrip-
⁴⁹ tion, and by reason thereof to have Bona & catalla proditorum, felonum, &c.

As to the second, by what means a Title by prescription or custom may be lost by inter-
⁵⁰ ruption; It is to be known, that the Title being once gained by prescription or custom, can
⁵¹ not be lost by interruption of the possession for 10 or 20 years, but by interruption in the
⁵² Right: as if a man have had a Bent or Common by prescription, unity of possession of a
⁵³ high and perdurable estate is an interruption in the right.

In a Writ of Mesne the Plaintiff made his Title by prescription, that the Defendant and
⁵⁴ his Ancestors had acquitted the Plaintiff and his Ancestors and the Terre-tenant time or
⁵⁵ of mind, &c. the Defendant took issue, that the Defendant and his Ancestors had not acquited
⁵⁶ the Plaintiff and his Ancestors and the Terre-tenant: and the Jury gave a special Verdict
⁵⁷ that the Grandfather of the Plaintiff was infeoffed by one Agnes, and that Agnes and her An-
⁵⁸ cestors were acquitted by the Ancestors of the Defendant time out of mind before that time, since
⁵⁹ which time no acquittal had been: and it was adjudged and affirmed in a Writ of Error, that
⁶⁰ the Plaintiff should recover his Acquital, for that there was once a Title by prescription es-
⁶¹ tablished, which cannot be taken away by a wrongfull Cessar to acquit of late time; and altho'
⁶² the verdict had found against the letter of the issue, yet for that the substance of the Issue was
⁶³ found, viz. a sufficient Title by prescription it was adjudged both by the Court of Comma-
⁶⁴ pleas, and in a Writ of Error by the Court of Kings Bench, for the Plaintiff; which is
⁶⁵ worthy of observation. So a Modus decimandi was alleged by prescription time out of min-
⁶⁶ for Tithes of Lambs, and the reupon issue joyned; and the Jury found that before 20 years
⁶⁷ then last past there was such a prescription, and that for these 20 years, he had paid Tithe
⁶⁸ Lamb in specie. And it was objected first, That the issue was found against the Plaintiff,
⁶⁹ that the prescription was general for all the time of prescription, and 20 years fail there-
⁷⁰ 2. That the party by payment of Tithes in specie had wavered the prescription or custom.
⁷¹ But it was adjudged for the Plaintiff in the prohibition; for albeit the Modus decimandi had
⁷² not been paid by the space of 20 years, yet the prescription being found, the substance of the
⁷³ issue is found for the Plaintiff. And if a man hath a Common by prescription, and taketh
⁷⁴ Lease of the Land for 20 years, whereby the Common is suspended, after the years ended
⁷⁵ may claim the Common generally by prescription; for that the suspension was but to
⁷⁶ possession, and not to the right, and the inheritance of the Common did always remain; and
⁷⁷ when a prescription or custom doth make a Title of inheritance (as Littleton speaketh) the
⁷⁸ party cannot alter or waive the same in pais.

¶ Temps dont memory, &c. & de title per prescription, que est tout en Ley. So as the time prescribed or defined by Law is, time whereof there is no memo-
⁷⁹ ry of man to the contrary. (e) Omnis querela, & omnis actio injuriarum limitata infra
⁸⁰ tempora.

¶ Temps de limitation. Limitation, as it is taken in Law, is a certain time pre-
⁸¹ scribed by Statute, within the which the Demandant in the action must prove himself
⁸² some of his Ancestors to be seised.

⁸³ ⁸⁴ 1 Rol. 686.
⁸⁵ (f) Regist. 158. Bract. fo.
⁸⁶ 373. 5 All. p. 2. 34 H. 6. 40
⁸⁷ (g) Stat. de Merton. 20 H.
⁸⁸ 3. c. 8.
⁸⁹ (h) Wlft. 1. An. 3. E. 1. c. 38
⁹⁰ Vide W. 2. 13 E. 1. c. 46.
⁹¹ (i) Mirror cap. 5. Sect. 1.
⁹² ⁹³ ⁹⁴ ⁹⁵ ⁹⁶ ⁹⁷ ⁹⁸ ⁹⁹ ¹⁰⁰ ¹⁰¹ ¹⁰² ¹⁰³ ¹⁰⁴ ¹⁰⁵ ¹⁰⁶ ¹⁰⁷ ¹⁰⁸ ¹⁰⁹ ¹¹⁰ ¹¹¹ ¹¹² ¹¹³ ¹¹⁴ ¹¹⁵ ¹¹⁶ ¹¹⁷ ¹¹⁸ ¹¹⁹ ¹²⁰ ¹²¹ ¹²² ¹²³ ¹²⁴ ¹²⁵ ¹²⁶ ¹²⁷ ¹²⁸ ¹²⁹ ¹³⁰ ¹³¹ ¹³² ¹³³ ¹³⁴ ¹³⁵ ¹³⁶ ¹³⁷ ¹³⁸ ¹³⁹ ¹⁴⁰ ¹⁴¹ ¹⁴² ¹⁴³ ¹⁴⁴ ¹⁴⁵ ¹⁴⁶ ¹⁴⁷ ¹⁴⁸ ¹⁴⁹ ¹⁵⁰ ¹⁵¹ ¹⁵² ¹⁵³ ¹⁵⁴ ¹⁵⁵ ¹⁵⁶ ¹⁵⁷ ¹⁵⁸ ¹⁵⁹ ¹⁶⁰ ¹⁶¹ ¹⁶² ¹⁶³ ¹⁶⁴ ¹⁶⁵ ¹⁶⁶ ¹⁶⁷ ¹⁶⁸ ¹⁶⁹ ¹⁷⁰ ¹⁷¹ ¹⁷² ¹⁷³ ¹⁷⁴ ¹⁷⁵ ¹⁷⁶ ¹⁷⁷ ¹⁷⁸ ¹⁷⁹ ¹⁸⁰ ¹⁸¹ ¹⁸² ¹⁸³ ¹⁸⁴ ¹⁸⁵ ¹⁸⁶ ¹⁸⁷ ¹⁸⁸ ¹⁸⁹ ¹⁹⁰ ¹⁹¹ ¹⁹² ¹⁹³ ¹⁹⁴ ¹⁹⁵ ¹⁹⁶ ¹⁹⁷ ¹⁹⁸ ¹⁹⁹ ²⁰⁰ ²⁰¹ ²⁰² ²⁰³ ²⁰⁴ ²⁰⁵ ²⁰⁶ ²⁰⁷ ²⁰⁸ ²⁰⁹ ²¹⁰ ²¹¹ ²¹² ²¹³ ²¹⁴ ²¹⁵ ²¹⁶ ²¹⁷ ²¹⁸ ²¹⁹ ²²⁰ ²²¹ ²²² ²²³ ²²⁴ ²²⁵ ²²⁶ ²²⁷ ²²⁸ ²²⁹ ²³⁰ ²³¹ ²³² ²³³ ²³⁴ ²³⁵ ²³⁶ ²³⁷ ²³⁸ ²³⁹ ²⁴⁰ ²⁴¹ ²⁴² ²⁴³ ²⁴⁴ ²⁴⁵ ²⁴⁶ ²⁴⁷ ²⁴⁸ ²⁴⁹ ²⁵⁰ ²⁵¹ ²⁵² ²⁵³ ²⁵⁴ ²⁵⁵ ²⁵⁶ ²⁵⁷ ²⁵⁸ ²⁵⁹ ²⁶⁰ ²⁶¹ ²⁶² ²⁶³ ²⁶⁴ ²⁶⁵ ²⁶⁶ ²⁶⁷ ²⁶⁸ ²⁶⁹ ²⁷⁰ ²⁷¹ ²⁷² ²⁷³ ²⁷⁴ ²⁷⁵ ²⁷⁶ ²⁷⁷ ²⁷⁸ ²⁷⁹ ²⁸⁰ ²⁸¹ ²⁸² ²⁸³ ²⁸⁴ ²⁸⁵ ²⁸⁶ ²⁸⁷ ²⁸⁸ ²⁸⁹ ²⁹⁰ ²⁹¹ ²⁹² ²⁹³ ²⁹⁴ ²⁹⁵ ²⁹⁶ ²⁹⁷ ²⁹⁸ ²⁹⁹ ³⁰⁰ ³⁰¹ ³⁰² ³⁰³ ³⁰⁴ ³⁰⁵ ³⁰⁶ ³⁰⁷ ³⁰⁸ ³⁰⁹ ³¹⁰ ³¹¹ ³¹² ³¹³ ³¹⁴ ³¹⁵ ³¹⁶ ³¹⁷ ³¹⁸ ³¹⁹ ³²⁰ ³²¹ ³²² ³²³ ³²⁴ ³²⁵ ³²⁶ ³²⁷ ³²⁸ ³²⁹ ³³⁰ ³³¹ ³³² ³³³ ³³⁴ ³³⁵ ³³⁶ ³³⁷ ³³⁸ ³³⁹ ³⁴⁰ ³⁴¹ ³⁴² ³⁴³ ³⁴⁴ ³⁴⁵ ³⁴⁶ ³⁴⁷ ³⁴⁸ ³⁴⁹ ³⁵⁰ ³⁵¹ ³⁵² ³⁵³ ³⁵⁴ ³⁵⁵ ³⁵⁶ ³⁵⁷ ³⁵⁸ ³⁵⁹ ³⁶⁰ ³⁶¹ ³⁶² ³⁶³ ³⁶⁴ ³⁶⁵ ³⁶⁶ ³⁶⁷ ³⁶⁸ ³⁶⁹ ³⁷⁰ ³⁷¹ ³⁷² ³⁷³ ³⁷⁴ ³⁷⁵ ³⁷⁶ ³⁷⁷ ³⁷⁸ ³⁷⁹ ³⁸⁰ ³⁸¹ ³⁸² ³⁸³ ³⁸⁴ ³⁸⁵ ³⁸⁶ ³⁸⁷ ³⁸⁸ ³⁸⁹ ³⁹⁰ ³⁹¹ ³⁹² ³⁹³ ³⁹⁴ ³⁹⁵ ³⁹⁶ ³⁹⁷ ³⁹⁸ ³⁹⁹ ⁴⁰⁰ ⁴⁰¹ ⁴⁰² ⁴⁰³ ⁴⁰⁴ ⁴⁰⁵ ⁴⁰⁶ ⁴⁰⁷ ⁴⁰⁸ ⁴⁰⁹ ⁴¹⁰ ⁴¹¹ ⁴¹² ⁴¹³ ⁴¹⁴ ⁴¹⁵ ⁴¹⁶ ⁴¹⁷ ⁴¹⁸ ⁴¹⁹ ⁴²⁰ ⁴²¹ ⁴²² ⁴²³ ⁴²⁴ ⁴²⁵ ⁴²⁶ ⁴²⁷ ⁴²⁸ ⁴²⁹ ⁴³⁰ ⁴³¹ ⁴³² ⁴³³ ⁴³⁴ ⁴³⁵ ⁴³⁶ ⁴³⁷ ⁴³⁸ ⁴³⁹ ⁴⁴⁰ ⁴⁴¹ ⁴⁴² ⁴⁴³ ⁴⁴⁴ ⁴⁴⁵ ⁴⁴⁶ ⁴⁴⁷ ⁴⁴⁸ ⁴⁴⁹ ⁴⁵⁰ ⁴⁵¹ ⁴⁵² ⁴⁵³ ⁴⁵⁴ ⁴⁵⁵ ⁴⁵⁶ ⁴⁵⁷ ⁴⁵⁸ ⁴⁵⁹ ⁴⁶⁰ ⁴⁶¹ ⁴⁶² ⁴⁶³ ⁴⁶⁴ ⁴⁶⁵ ⁴⁶⁶ ⁴⁶⁷ ⁴⁶⁸ ⁴⁶⁹ ⁴⁷⁰ ⁴⁷¹ ⁴⁷² ⁴⁷³ ⁴⁷⁴ ⁴⁷⁵ ⁴⁷⁶ ⁴⁷⁷ ⁴⁷⁸ ⁴⁷⁹ ⁴⁸⁰ ⁴⁸¹ ⁴⁸² ⁴⁸³ ⁴⁸⁴ ⁴⁸⁵ ⁴⁸⁶ ⁴⁸⁷ ⁴⁸⁸ ⁴⁸⁹ ⁴⁹⁰ ⁴⁹¹ ⁴⁹² ⁴⁹³ ⁴⁹⁴ ⁴⁹⁵ ⁴⁹⁶ ⁴⁹⁷ ⁴⁹⁸ ⁴⁹⁹ ⁵⁰⁰ ⁵⁰¹ ⁵⁰² ⁵⁰³ ⁵⁰⁴ ⁵⁰⁵ ⁵⁰⁶ ⁵⁰⁷ ⁵⁰⁸ ⁵⁰⁹ ⁵¹⁰ ⁵¹¹ ⁵¹² ⁵¹³ ⁵¹⁴ ⁵¹⁵ ⁵¹⁶ ⁵¹⁷ ⁵¹⁸ ⁵¹⁹ ⁵²⁰ ⁵²¹ ⁵²² ⁵²³ ⁵²⁴ ⁵²⁵ ⁵²⁶ ⁵²⁷ ⁵²⁸ ⁵²⁹ ⁵³⁰ ⁵³¹ ⁵³² ⁵³³ ⁵³⁴ ⁵³⁵ ⁵³⁶ ⁵³⁷ ⁵³⁸ ⁵³⁹ ⁵⁴⁰ ⁵⁴¹ ⁵⁴² ⁵⁴³ ⁵⁴⁴ ⁵⁴⁵ ⁵⁴⁶ ⁵⁴⁷ ⁵⁴⁸ ⁵⁴⁹ ⁵⁵⁰ ⁵⁵¹ ⁵⁵² ⁵⁵³ ⁵⁵⁴ ⁵⁵⁵ ⁵⁵⁶ ⁵⁵⁷ ⁵⁵⁸ ⁵⁵⁹ ⁵⁶⁰ ⁵⁶¹ ⁵⁶² ⁵⁶³ ⁵⁶⁴ ⁵⁶⁵ ⁵⁶⁶ ⁵⁶⁷ ⁵⁶⁸ ⁵⁶⁹ ⁵⁷⁰ ⁵⁷¹ ⁵⁷² ⁵⁷³ ⁵⁷⁴ ⁵⁷⁵ ⁵⁷⁶ ⁵⁷⁷ ⁵⁷⁸ ⁵⁷⁹ ⁵⁸⁰ ⁵⁸¹ ⁵⁸² ⁵⁸³ ⁵⁸⁴ ⁵⁸⁵ ⁵⁸⁶ ⁵⁸⁷ ⁵⁸⁸ ⁵⁸⁹ ⁵⁹⁰ ⁵⁹¹ ⁵⁹² ⁵⁹³ ⁵⁹⁴ ⁵⁹⁵ ⁵⁹⁶ ⁵⁹⁷ ⁵⁹⁸ ⁵⁹⁹ ⁶⁰⁰ ⁶⁰¹ ⁶⁰² ⁶⁰³ ⁶⁰⁴ ⁶⁰⁵ <

ib. II. Of Tenure in Burgage. Sept. 170. 115

Time of Limitation is theofold : First, in Writs, and that is by diverse Acts of Parliament. Secondly, to make a title to any Inheritance, and that (as Littleton will say), is the Common Law.

Limitation of times in Writs is prohibited by the said Statute of Merton, and after by the Statute of W. i. whiche Littleton here citeth, and whiche was in force when he wrote . But since altered by a profitable and necessary Statute (k) made Anno 32 H.8. and by that Act the former limitation of time in a writ of Right is changed, and reduced to threescore years, before the Teste of the Writ, and so of other Actions, as by the Statute at large aforesaid. But it is to be observed, that this Act of 32 H.8. extendeth (l) not to a Formedon in the scender, nor to the services of Escuage, Homage and Fealty, for a man may live above the time limited by the Act: neither doth it extend to any other service which by common possession may not happen or become due within sixty years; as to cover the hall of the Lord, or to attend on his Lord when he goeth to War, or the like; nor where the service is not traversable or payable: neither doth it extend to a Rent created by Deed, nor to a Rent reserved upon any particular estate; for (m) in the one case the Deed is the Title, and in the other the reservation: nor to any Writ of Right of Abbotson, Quare Impedit, or Assise of Darreine presentment, (for there was a Parson of one of my Churches that had been Incumbent there above many years, and died but lately) or any writ of Right of Ward, or Babilment of Ward, but they are left as they were before the Statute of 32 H. 8. But hereof thus much for the better understanding of Littleton shall suffice.

¶ *De temps le Roy R. I.* And that was intended from the first day of his Reign, [from the time] betng indefinitely, doth include the whole time of his Reign, whiche is to obserue.

¶ *Briefe de Droit.* Breve de Recto, a writ of Right, so called, for that the words in writ of Right are, Quod sine dilatatione plenum rectum teneas.

¶ Title de prescription al Common Ley, &c. de tempus dont memorie des mes ne curge al contrarie. Docere oportet longum tempus, & longum usum illum, viz excedit memoriam hominum: tale enim tempus sufficit pro iure.

excedit memoriam hominum ; tale enim tempus sufficit pro jure.

¶ *Ascun proofe al contrarie.* For if there be any sufficient proof of Record or writing to the contrary albeit it exceed the memory or proper knowledge of any man living, it is within the memory of man : for memory or knowledge is twofold. First, by knowledge by proof, as by Record or sufficient matter of writing. Secondly, by his own proper knowledge. ¶ Record or sufficient matter in writing are good memorials, for Litera scripta manet. And therefore it is said, when two will by any Record or writing commit the memory of ything to posterity, it is said tradere memoriam. And this is the reason that regularly a man may prescribe or alledge a Custom against a Statute, because that is matter of Record, and is the highest proof and matter of Record in Law. But yet a man may prescribe against Act of Parliament, when his Prescription or Custom is saved or preserved by another Act of Parliament.

There is also a diversity between an Act of Parliament in the negative, and in the affirmative; for an affirmative Act doth not take away a Custom, as the Statutes of Wills of 32 and H.8. do not take away a Custom to devise lands, as it hath been often adjudged. More, there is a diversity between Statutes that be in the negative; for if a Statute in the negative be declarative of the ancient Law, that is in affirmance of the Common Law, there well as a man may prescribe or alledge a Custom against the Common Law, so a man may against such a Statute; for as our Author saith, Consuetudo, &c. privat communem legem. The Statute of Magna Charta prohibeth, that no Leet shall be holden but twice in the years, a man may prescribe to hold it oftener and at other times; for that the Statute (n) was in affirmance of the Common Law.

† 3 Co. 121.
28 Ass. 25. 32 Ass. 18.
45 E. 3. 26 5 H. 7. 10.
8 H. 7. 7 11 H. 7. 21.
Dier 23 Eliz. 2. 73.

† 2 Rot. 265, 27d.
Post 360, a. 365, b. 359;
b. 381.a
† 4 Inst. 274, 298, 203.
† 2 Inst. 20. † 3 Co. 130.
† 11 Co. 63.
† 8 Co. 10. † 9 Co. 74.
† 12 Co. 22. † Plow, 207.a
† 2 Cro. 313, 354.
† F.N.B. 220.b.
† 2 Rot. 266.
Magna Charta cap. 35.
(n) 6 H. 7. 2. 8 H. 4. 34.

in affirmance of the Common Law.
So the Statute (o) of 34 E. r. probideth, that none shall cut down any trees of his own
bytis a fforrest without the biew of the fforester : but inasmuch as this Act is in affir-
mace of the Common Law, a man may prescribe to cut down his woods within a fforrest bytis-
t the biew of the fforester. And so it was adjudged in 16 Eliz. in the Exchequer by Sir
W. Sanders Chiefe Baron, and other the Barons of the Exchequer, as Sir John Popham
chiefe Justice of the King's Benches reported to me.

Lib. II. Cap. X. Of Tenure in Burgage. Sect. 171.

manerium predi^ct, a tempore quo non extat memoria & sine interruptione aliquali tenuerunt
 prædi^ct manerium cum pertinentiis extra regard' Forestæ, & habuerunt Woodwardum portantem
 arcum & sagittas ad praesentand' praesentanda de venatione tantum, &c. & habuerunt in boscis suis
 de Semere forgeas & mineras, & amputarunt, dederunt, & vendiderunt boscum suum infra manerium
 prædi^ct sine visu forestariorum pro voluntate sua, & fugarunt & ceperunt Vulpes, Lepores, Capreolos, &c. sicut idem Henricus Percy super' clamat. Which claim by prescription, found as is above
 said, the Justices doubted only of two points. The first, soasmuch as the said Mannor was
 within the limits of the Forrest, it should not only be Contra assam Forestæ for his Woodman
 to bear Bow and Arrows, where by Law he ought to bear but an Hatchet, and no Bow or
 Arrows within the Forrest, but also de facili cedere possit in destructionem ferarum, &c. and therfore doubted whether it might be claimed by prescription. Their second doubt was con-
 cerning fugationem & captionem Capreolorum in boscis suis prædict', eo quod est bestia venatoria
 Forestæ, & transgressores inde convicti finem facerent ut pro transgressione venationi. And for the
 difficulty the claim was adjourned into the King's Bench. But of the other parts of
 Prescription no doubt at all was made: and the like had been allotted in the said Circ, as in
 the case of Thomas Lord Wake of Lydell, and of Gilbert of Acton in the same Circ, Ror: and of others.

¹ Post 26.a.283.
¹ Ante 17.a.10 Co. 88.
¹ Sid. 336.

I *Il est prove per le pleader.* Note, one of the best arguments or proofs in Law
 is drawn from the right entries or course of pleading; for the Law it self speaketh by
 pleading: and therefore Littleton here saith; It is proved by the pleading, &c. as if pleader
 were ipsius legis viva vox.

I *Entant que tiel title per prescription fuit al Common ley.* Note, all the prescriptions that were limited from a certain time were by Act of Parliament
 as from the time of H. I. which was the first time of limitation set down by any Act of Par-
 liament, and so from the Reign of R. I. &c. But this prescription of time out of memory
 man was (as Littleton here saith) at the Common Law, and limited to no time. Also he
 is implied a Maxim of the Law, viz. That whatsoever was at the Common Law, and
 not ousted or taken away by any Statute, remaineth still.

¹ Ante 110.b. 1 Post.
 344 a.

¹ Pref. to S. Rop.

I *Common Ley.* The Law of England is divided, as hath been said before, into three
 parts: 1. the Common Law, which is the most general and ancient Law of the Realm,
 part whereof Littleton wrote; 2. Statutes or Acts of Parliament; and 3. particular Custom
 (whereof Littleton also maketh some mention:) I say particular, for if it be the general cus-
 tom of the Realm, it is part of the Common Law.

The Common Law hath no controller in any part of it but the high Court of Parliament
 and if it be not abrogated or altered by Parliament, it remains still; as Littleton here saith.
 The Common Law appeareth in the Statute of Magna Charta and other ancient Statutes
 (which for the most part are affirmations of the Common Law) in the original Charters, in
 dictal Records, and in our Books of terms and years. Acts of Parliament appear in
 Rolls of Parliament, and for the most part are in print. Particular Customs are to be prob-

Sect 171.

¹ 2 Inst 669.
¹ 2 Vid. Lindw. verbo-
 viue.
 Bract. lib. 4. fol. 434.
 & lib. 4. fol. 211.
 Fortescue cap. 29.
 7 E. 6. fines levie de ter-
 re Br. 91.

34 E. I. Quare Imp. 187.

Fortescue cap. 29, f. 66.b

Fortescue cap. 24, fo. 51b

V illa. Villa quasi
 vehilla, quod in eam
 convehantur fructus
 And it is called Vicus, because
 it is prope viam. Villa est ex
 pluribus mansionibus vicinata, &
 collata ex pluribus vicinis. If a
 Town be decayed so as no

houses remain, yet it is a Town in Law. And so if a Borough be decayed, yet shall it be
 Burgesses to the Parliament, as old Salisbury and others do. It cannot be a Town in law
 unless it hath, or in time past hath had a Church, and celebration of Divine Service,
 sacraments, and Burials. What alteration hath been made in Towns, hear what a
 Lawyer saith, In Anglia Villula tam parva inveniri non poterit, in qua non est Miles, Armiger
 vel Paterfamilias, &c. magnus ditatus possessionibus; nec non liberi tenentes alii & valecti plu-
 mi suis patrimonii sufficientes, &c. And it appeareth by Littleton, that a Town is a
 Genus, and a Borough is the Species; for he saith that every Borough is a Town, but
 every Town is not a Borough. Et sub appellatione Villarum continentur Burgi & Civitate-

Town, chescun Burgh est un
 ville, mes nempe e con-
 verso. Plus serra dit
 de custom en le Te. in the tenure of Villen
 nure de Villenage. age.

A lso, every Burgh is a Town
 but not e converso. More
 shall be said of custom
 in the tenure of Villen-
 age.

Berwica, or Berewit, in Domesday signifieth a Town: Hæ Berewicæ pertinent ad Berchley. Domesday, Glouc.
t sic recitat plus quam viginti villas.)
† 5 Co 72.

There be in England and Wales eight thousand eight hundred and threc Towns, or there-

out.

See moze De villis, parochiis, & hamlettis, in the ancient Authors of the Law, and plenit-

ly in our other Books. But let us now hear what Littleton saith.

B.-E.ubl.sup Flet li. 4.
c. c. 1.5. & lib. 6. c p 49,
B.uit. vol. 124, & 274, &c.

Chap. II.

Villenage.

Sect. 172.

TEnure en villenage est plus operment, quant un siegnior tient de son siegnior a que il a villeine certaine res ou tenements longz le custom del manor, ou autrement la valunt son Seignior, & de faire a son siegnior villein ser-
ce; come de porter de carier le fime le ar hors del City, del Mannor son siegnior, jesques a terc son Seignior gisant ceo sur la re, & hujusmodi.

t ascuns Franke mes teignont lour nements solonqz le cisme del certaine anors per tiels ser-
ces. Et lour tenure est appelle Tenure en villenage, & coze ils ne sont s villeines. Car il fre tenus in Vil-
lage, ou villeine re, ne ascun cu-
me surdant de la e, ne unques fetra

TEnure in vil-
lenage is most
properly, when
a Vellein holdeth of
his Lord to whom he
is a Villein certain
lands or tenements ac-
cording to the Cu-
stom of the Mannor,
or otherwise at the
will of his Lord, and
to do to his Lord
Villein-service; as to
carry and recarry the
dung of his Lord out
of the City, or out of
his Lords Mannor, un-
to the Land of his
Lord, and to spread
the same upon the
Land, and such like.

And some free-men hold their Tenements according to the cu-
stom of certain Mannors by such services. And their Tenure also is called Tenure in vil-
lenage, and yet they are not villeins. For no land holden in vil-
lenage, or villein Land, nor any custom aris-
ing out of the Land, shall ever make a free
man villein; but a

TEnure en vil-
lenage. Villein is from the French word Villaine, and that
a villa, quia villa adscriptus est, for they whitch are now called
Villani, of ancient times were
called Adscriptiti; and in the Common law he is called Na-
tivus, quia pro maiore parte na-
tus est servus: and this is he
whitch the Civilians called servus. (a) Theyn in the Saxon tongue is Liber, and Then, ser-
vus. Theme (sometimes written Theame corruptly) is an old Saxon word, and signifieth Potestatem habendi in nativo sive villanos cum eorum se-
quelis, terris bonis & catallis. But Teame sometimes cor-
ruptly written Theam, is of another signification: for it is
also an old Saxon word, (b) Vide Lamb.inter Le-
ges St. Edw. fol. 132. nu. and signifieth where a man cannot produce his warrant of that whitch he bought ac-
cording to his Moucher.

TVillenage. Villena-
gium (as in like cases hath
been said, when the termi-
nation is in age,) is the ser-
vice of a bond-man. And yet
a free-man may do the service
of him that is bond. And
therefore a Tenure in Vil-
lenage is twofold, one where
the person of the Tenant is
bond, and the tenure servile;
the other where the person is
free, and the tenure servile.
(c) Serva terra liberos de san-
guine existentes, villanos fa-
cere non potest. And there-
fore it is said, (d) Est enim
ratio & regula generalis in
istis duobus casibus, quod liber
homo nihil libertatis propter
personam

‡ F.N.B. 12. ‡ 2 Rol. 732

(c) Hil. 29 E. 1. coram.

Rege, Ebor. in Thesaur.

(d) Bract. lib. 4. fol. 170.

(c) Idem lib. I. cap. 6.
Brit. c. 31, &c. 66.
Flet. lib. I. cap. 3.

(f) Brad. fol. 26.
43 E. 3. 5. acc.

(g) Brad. lib. 4. fol. 208.
Brit. cap. 31.

(h) Brad. lib. I. fol. 7.

(i) Fortesc. cap. 42.

(k) Brit. cap. 31.
(l) Brad. lib. I. cap. 6.
Flet. lib. I. cap. 3. &
cap. 5. Mirr. cap. 2. sect. 18.

⁴ F.N.B.77.f.
Brad. lib. I. cap. 6.
Brit. c. 31.
Flet. lib. I. cap. 2. & 3.
(m) Mirror. cap. 2. sect. 18
(n) Mirror. cap. 2. sect. 18
Gen. 9. vers. 10, 11, &c.
Ambrose.

personam suam liberam confert
villenagio, nec liberum tene-
mentum e contrario mutat sta-
tum aut conditionem villani.
And again, (e) Villenagium
vel servitium nihil detrahit li-
bertati, habita tamen distin-
ctione utrum tales sint villani,
& tenuerunt in villano socagio
de Dominico Domini Regis
And again, (f) Tenemen-
tum non mutat statum liberi,
non magis quam servi; poterit
enim liber homo tenere purum
villenagium faciendo quicquid
ad villanum pertinebit, & ni-
hilominus liber erit, cum hoc
faciat ratione villenagii, & non
ratione personæ suæ; & ideo
poterit quando voluerit, vil-
lenagium deserere, & liber disce-
dere, nisi illaqueatus sit per uxo-
rem nativam ad hoc faciendum,
ad quam ingressus fuit in vil-
lenagium, & quæ præstare poterit
impedimentum, &c. **And again,** (g) Purum villenagium est, a quo
præstatur servitium incertum & indeterminatum, ubi scire non poterit vespere quale servitium si
debet mane, viz. ubi quis facere tenetur quicquid ei præceptum fuerit. **And another saith to the**
same intent, Ceux ne scavoiront le vespere de quoy ils server' en la matin. (h) Fuerunt in Co-
questu liberi homines qui libere tenuerunt tenementa sua per libera servitia, vel per literas con-
tudines, & cum per potentiores ejeci essent, postmodum reversi, receperunt eadem tenementa su-
tenenda in Villenagio, faciendo inde opera servilia, sed certa & nominata, &c. & nihilominus libri-
quia licet faciunt opera servilia, cum non faciunt ea ratione personarum, sed ratione tenementorum
&c.

How Villenage or servitude began, and for what cause, it is said: (i) Ab homine & pro-
tio introducta est servitus, sed libertas a Deo hominis est indita naturæ; quare ipsa ab homine sub-
lata semper redire gliscit, ut facit omne quod libertate naturali privatur. **And another saith,** (k)
That the condition of villeins from freedom unto bondage of ancient time grew by con-
stitutions of Nations, (l) Fiunt etiam servi liberi homines captivitate de jure gentium, and not
by the Law of Nature, as from the time of Noah's Flood forward, in which time all things
were common to all, and free to all men alike, who lived under the Law natural: and by
multiplication of people, and making proper and private those things that were common
among battels. **And then it was ordained by constitution of Nations,** That none should kill
another, but that he that was taken in battel should remain bond to his taker for ever, and
he to do with him, and all that should come of him, his will and pleasure, as with his beast,
or any other Chattel, to give, or to sell, or to kill. **And after it was ordained for the cruelty**
of some Lords, that none should kill them, and that the life and members of them, as well as
of free men, were in the hands and protection of Kings, and that he that killed his Villein
should have the same judgment as if he had killed a freeman. **Thereupon they were called**
Servi, quia servabantur a Dominis & non occidebantur, & non a serviendo. He is called Nativus
nascendo quia plerumque natus est servus: **And he is called Villanus, for that he doth his Vil-
lein service in villis.**

Est autem libertas naturalis facultas ejus quod cuique facere libet, nisi quod de jure aut vi prohibi-
betur. Servitus est constitutio de jure gentium qua quis Domino alieno contra naturam subjicitur
And again, (m) Et tout soits q̄ toutes creatures duisfont este franks solonque le Ley de nature per
con stitution nequidant, & fait de home sont auters creatures enservies, sicome est dit beasts in
Parkes, pissons en lservors, & oyseaux en cages.

(n) **This is assured, That bondage or servitude was first inflicted for dishonouring of pa-**
rents: for Cham the Father of Canaan (of whom issued the Canaanites) seeing the nakedness of
his Father Noah, and shewing it in derision to his Brethren, was therefore punished in his
son Canaan with bondage. **And herewith agreeeth the Divine, Ante vini inventionem inconcu-**
sa libertas: non esset hodie servitus, si ebrietas non fuisset.

Hors del Cite ou del Manno, &c. This is false printed, for the original

frank home villein; Villein may make free
mes un villein puit Land to be Villein
fair frank terre de este
villein terre a son Seignior. **Sicome lou**
un villein purchase ter-
re en Fee simple ou en
Fee tail, le Sñr del
villein poet enter en
la terre, & ousse le
villein & ses heires a
touts jours: & puis le
Seignior (sil voleoit)
puis lesser mesme la
terre a le Villein, a
tener en Villenage.

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gntal is, Hors del scite del Mannor, and so would it be amended in the Impressions of the book hereafter.

Et ascuns frank homs teignont, &c. This is apparent enough, especially Mirror ca. 2. sect. 18. a.c.

On un villeine purchase terre en fee simple, yet the Villain may pur= Mirror cap. 2. sect. 18.
se some kind of Inheritances in fee simple, which the Lord of the Villain cannot have. As
a Villain purchase a common sans number, the Lord shall not have it, for the Lord may sur-
ge the same, which should be a prejudice to the Terre-tenant: and the same law of a Co-
ny in certain granted to a Villain, and such like Inheritances. And therefore Littleton ma-
lly said, Purchase terre: When the villain hath an estate of any thing certain, the Lord
ll have it, as a Rent granted to the villain, Common certain, Estovers certain and such
e. (o) But that which lieth in action, as a warranty made to the villain, his heirs and as-
ns, the Lord shall not take advantage of by Woucher, because it is in lieu of an action: ne=
r shall the Lord take advantage of any Obligation or Covenant, or other thing in action + 3 Co.62. 63. 12 Rot.
de to the Villain, because they lie in privity, and cannot be transferred to others. + F.N.B.77 a.
(p) If a man be Lessee of a villain for life, or years, or at will, and the villain purchaseth
ds in fee; if the Lessee entreteth into the lands, he shall hold the lands as a perquisite to him
his heirs for ever. But if a Bishop have a Villain in the right of his Bishoprick, and
purchaseth lands, and the Bishop entreteth, the Bishop shall have this perquisite to him and
successors, and not to him and his heirs, for the law respecteth the quality, and not the quan-
tity of his estate. So if Executors have a Villain for years, and the Villain purchaseth
nds in fee, and the Executors enter, they shall have a fee simple, but it shall be assets.

Fee tail. By this it is apparent, that if lands be given to a villain and to the heirs
body, the Lord may enter, and put out the villain and the heirs of his body; for Quicquid + Plow.d.235 b.
uiritur servo, acquiritur Dominus. And in this case the Lord gains a fee simple determinable + Ante 90.a.24.a.F.N.B.
on the dying of the villain without heir of his body, and the absolute fee simple remaineth 12.c.
in the Donor. And if the Lord enter, and after infranchise the Donee, and after the Do- in Walsingham's case.
hath issue; yet that issue shall never have remedy, either by Formedon or entry, to recover
land, by force of the Statute of Donis Conditionalibus, for that Statute giveth remedy to
issues of the Donee that have capacity and power to take and retain such a gift. And the
of the Lord remains as it did at the common law, for that Statute restraineth acts done
by the Tenant in tail. And so it is, if lands be given to an Alien, and to the heirs of his
upon office found, the land is seised for the King, afterwards the King makes the Alien
tenant, who hath issue and dieth; the King shall detain the land against the issue

Sect. 173.

Ec nota, si feoffment soit fait a certain person ou personnes en fee al use duu villeine, si un villeine ove auters per-
sonnes enfeoffes al use le vil-
le, quel estate que le villeine ad-
le use, en fee tail, pur terme de
ou dans, l'Seignior del vil-
le post entrer en touts ceux ter-
s & tenements, sicome l'villeine
est sole seisié del demesne. Et
per Lestatute de anno 19 H. 7.
p. 15.

AND note, if a feoffment be made to a certain person or persons in fee to the use of a vil-
lein, or if a villein with other persons be infcoffed to the use of the villein, what estate soever that the villein hath in the use, in fee tail, for term of life or years, the Lord of the villein may enter into all those lands and tenements, as if the Villein had been sole seised of the Demesne. And this is given by the Statute of Anno 19 H. 7. cap. 15.

This is an addition to Littleton, and the Statute of 19 H. 7. cap. 15. theretn mentio-
ned, for the cause that hath been aforesaid, hath lost his force.

^f F.N.B.77.f.
(q) 15 E.3.tit. Ald. 33.
Bracton 1.2.f.26.
Mirror c.2.Sect.18.

See more of this after in
this Chapter, Sect. 194.
^f Dr. & Stud.66.b.

(r) Fleta lib.3.cap.13.
Mirror cap.2.Sect.18.

TA Paier un fine pur le mariage, &c
(q) And this villein and ser-
vile Tenure is called in old
books Marchetum, or Merchet.
Marchetum vero pro filia dare
non competit libero homini in-
ter alia propter liberi sanguinis
privilegium, &c. And this is
true de communi jure: sed
modus & conventio vincunt le-
gem. And, as Littleton here
saith, it is the folly of such a
Freeman to take such Man-
noys, Lands, or Tenements,
to hold of the Lord by such
bondage. And yet this doth
not make such a Freeman a
Villein. (r) Quia hujusmodi
præstationes fiunt ratione tene-
menti, & non ratione personæ in
duratione comprehensæ & re-
servat'; non enim unum & idem
est, sed longe aliud, tenere libere,
& per liberum servitium, &c. ^fFor
the signification of this word,
Vide Sect. 194. & 74. & 441.

^f 2 Rot.732.
Lib.Rub.cap.76,77.
Bracton 1.1.c.6.
Bracton fol.77.
^f Post.120.a.
(f) Bract.1.1.c.6.
Fleta 1.1.c.3.8 Aff.p.13.
11 Aff.12.24 Aff.1.
73 Aff.1. 17 E.3.78,79.
27 E.3.89,18 E.4.25.
27 H.8.7.b. Lefstatute de
12 E.3.c.17.
(r) 17 E.3.23,11 H.4.26
37 H.6.21 Dier Mich. 7,
& 8 Eliz.242. Pl.Com.
79, &c.
(u) Glanvil 1.9.c.8.
Bracton 1.3.f.156.
Britton f.121.
(x) Lib.6.fol.11, & 12.
in Gentleman's case.

^f 3 Inst.71. ^f F.N.B.138
^f Post.128,260.a.
^f 4 Co.71.a. ^f 8 Co.38.
^f 1 Rot. 527. ^f 2 Rot.
862.863. ^f Plow.491.b.
^f Sid.94.
^f 2 Rot.575,576.b.
^f Sid. 314.

TM Es si ascun
frank home
voile prender ascun
tres ou tenements a
tener de son Sire p
tel villeine service,
s. a payer un fine a
luy pur le mariage d
ses fits ou files, doneq
il paiera tel fine pur
le mariage: & nient
obstant que il est le
follie de tel franke
home de prender en
tel form terres ou te-
nements a tener de le
seignior per tel bon-
dage, uncoze ceo ne
fait le frank home vil-
lein.

BUT if a Freeman
will take any
Lands or Tenements
to hold of his Lord by
such villeinc service,
viz. to pay a Fine to
him for the marriage
of his sons or daugh-
ters, then he shall pay
such Fine for the mar-
riage: yet notwithstanding
the folly of such Free-
man to take in such
form Lands or Teme-
ments to hold of the
Lord by such bon-
dage, yet this maketh
not the Freeman a Vil-
lein.

Sect. 175.

TEM chescun vil-
lein ou est un vil-
lein p title de prescrip-
tion, cestascovoir, q il
& ses auncestors ont
este villeins d temps
dont memorie ne curt;
ou il est villein per son
confession demesme en
court de Record.

Also every villein
is either a villein
by title of prescripti-
on, to wit, that he and
his Auncestors have
been Villeins time out
of mind of man; or he
is a Villein by his own
confession in a Court
of Record.

¶ En Court de Record. Record is derived of the Latin word Recordor, that is, to keep
mind, as the Poet saith, Si rite audita recordor: and therefore a Record or Inrolment is
Memorial or Monument of so high a nature, (t) as it importeth in it self such an ab-
olute verity, as if it be pleaded that there is no such Record, it shall not receive any try-
ing by witness, jury, or otherwise, but by it self. (u) And every Court of Record is in
Kings Court, albeit another may have the profit; wherein if the Judges do err, a Wi-
ll of Error doth ly. (x) But the County Court, the Hundred Court, the Court Baron, an-
such like, are no Courts of Record, and therefore the proceedings therein may be denied, as
tryed by Jury; and upon their judgments a Will of Error lyeth not, but a Will of false judg-

ent, for that they are no Courts of Record, because they cannot hold plea of debt or trespass, ^{+ 14 H.8.15. + 4 Co.24.}
the Debt or Damages do amount to forty shillings, or of any trespass Vi & armis. ^{+ Mo.66. + 1 RoL.543.}
Monumenta, quæ nos recorda vocamus, sunt veritatis & vetustatis vestigia.

Sect. 176.

Mes si frank home ad divers issues, et puis il confessus, and afterwards he confesses himself to be a Villein to another en Court de Record, uncoze ther in a Court of Record, yet those issues que el avera devant le confess. sont franks; mes les issues fession are free; but the issues which he il avera apres le confession ser. he shall have after the confession shall be Villains.

This is so Evident as it needeth no explication.

Sect. 177.

I Tem si le villein purchase et alien la terre a autre devant que Seignior enter, onques le Seigni- ne post enter, car serra adjudge son sieur, q il nentra pas devant la terre fust au le maine le vil- laine. Et issint est es biens: si le villein chate biens, et eux end ou done a un autre devant que le seignior seisiest les biens, adonques le seignior ne post eur sier: mes si le seignior devant aucun tiel ender ou done vient en la ville la ou leurs biens sont, et la blement enter les incines clama les biens, et seisiest parcel in the name of Seisin

Also if a Villain purchase Land, and alien the Land to another before that the Lord enter, then the Lord cannot enter, for it shall be adjudged his folly, that he did not enter when the Land was in the hands of the Villain. And so it is of Goods: If the Villain buy Goods, and sell or give them to another before the Lord seifeth them, then the Lord may not seise the same: but if the Lord before any such sale or gift commeth into the Town where such goods be, and there openly amongst the neighbours claims the goods, and seises part of the goods

¶ g 2

This case, before the Lord doth enter, he hath neither jus in re nec jus ad rem, but only a possibility of an estate, which estate he must gain by his entry: and therefore if the villein doth by way of prevention alien before the Lord doth enter, the Lord is barred of the possibility which he had to the land for ever. (a) Si autem servus vendiderit feodum quod sibi & ha- redibus perquisiverit antequam Dominus seisinam inde ceperit, valet donatio, & Dominus sibi ipsi imputet, quod tantum expe- stavit. But (b) if the Villain of the King purchaseth land, and alieneth before the King (upon an office found for him) doth enter, yet the King after office found shall have the Land, Quia nullum tempus occurrit Regi, as Littleton himself saith in the next Section. And yet after office found, the King shall not have the mean pro- fits, because the title is by the seizure.

<sup>+ Dr. & Stud. 140.5.
+ RoL. 735.</sup>

<sup>(a) Eleta lib. 3. cap. 2.;
Britton fol. 98.2.
19 E.2. Dower 172.</sup>

<sup>(b) 35 E.3. tit villen. 22.
9 H.6. 21. per Babington
12 H.7. 12.
+ 8 Co. 170. + 7 Co. 28.
+ 2 RoL. 734.</sup>

TPurchase terre. The like Law is of Seigniores, Adbowsons, Bevers- stons, Remainers, Menes, Commons certain, and such like certain Inheritances, wherin the Villain

Hab.

bath any estate or interest. If the Villain purchase Land either in Fee simple, Fee tail or for life, if the Villain doth alien before the Lord doth enter, he doth prevent the Lord. But yet the issue of the Villain shall recover the Land intailed in a Formedom, and then the Lord may enter.

¶ Alien la terre.
Alien commeth of the Verb Alienare, id est, alienum facere, vel ex nostro dominio in alie-

num transferre, sive rem aliquam in dominium alterius transferre. If a Freeman hath issue, and afterward by confession becomes bond, and purchaseth lands in Fee, and before the Lord enter he dieth seised, and the land descends to his issue which is free, in this case the Lord shall not enter upon the heir, and yet this is a descent, and no alienation. The like law it is if the land so purchased by the Villain doth escheat to the Lord of the fee before any entry made by the Lord of the Villain : so as the act of the Law, that is, the descent or escheat, may as well prevent the Lord of his entry, as the act of the party by alienation.

If a Villain be disseised before the Lord doth enter, the Lord may enter into the land in the name of the Villain, and thereby gain the Inheritance of the land : but if there be a descent, so as the entry of the Villain be taken away, then the Villain must recontinue the estate of the Land by judgment and execution before the Lord of the Villain can enter. And the word (alien) doth not only extend to alienations of Land in Deed, but also to alienations in Law; as if the Villain purchase Land and dieth without heir, and the Land escheat, or there be a Recovery against the Villain in a Cessavit, or the like.

‡ 2 Roi. 733.
‡ 5 Co. 109.
‡ 2 Roi. 58.

¶ Et r^{es}sint est des biens, &c. Biens, bona, includes all Chattels, as well real as personal. Chattels is a French word, and signifies Goods, which by a word of Art we call Catalla. Now goods or chattels are either personal, or real. Personal, as horse and other beast, household-stuff, bows, weapons, and such like ; called personal, because for the most part they belong to the person of a man, or else for that they are to be recovered by personal actions. Real because they concern the Reality, as terms for years of Lands or Tenements, Wardship, the Interest of Tenant by Statute Staple, by Statute Merchant, by Elegit, and such like.

Bona dividuntur in mobilia & immobilia: mobilia rursum dividuntur in ea quæ se movent, & ab aliis moventur. But by the common law no estate of inheritance or freehold is comprehended under these words bona or catalla. And it is to be observed, that as the title of the Lord to the Villain's lands beginneth by his entry, so his title to the goods beginneth by the seizure of them. And here again it is to be observed, that where our Author in this branch concerning goods useth these words (sell or give) that the same extendeth as well to gifts in Law as gifts in Deed. And therefore if a Heire hath goods, and taketh Baron, by this gift in Law, by force of the marriage, the Lord is barred. And so it is if a Villain make his Executors, and dieth, by this gift in Law the Lord is barred, as shall be said hereafter.

¶ Et clame les biens, &c. seistit parcel des biens. For a claim only of the goods of the Villain is not sufficient in Law; but he must seize some part in the name of all the residue, as here it appeareth, or that the goods be within the view of the Lord; for the claim and his view amount to a seizure; as the claim of a ward being present by word is a sufficient seizure, albeit the Guardian layeth no hands on him. See hereafter Sect. 321. And so now a diversity between a claim of Lands or Tenements, and goods. (c) In an action of trespass or detinue brought by the Villain, a release made to the Defendant by the Lord is a good bar for that amounts to a seizure and grant. If the Villain doth buy goods, and make his Executors, and dieth before the Lord doth seize them, the Executors shall detain them against the Lord of the Villain.

¶ Ad, ou aver poit, &c. Here (&c.) doth imply an excellent point of learning, for that such a claim doth not only vest the goods which the Villain then hath, but also which he after that shall acquire and get. But otherwise it is of Lands of Freehold or Inheruance, for there such a general entry or claim extends only to the lands the Villain hath at that

3 H. 4. 15. 46 E. 3. batte
217. Duct. & Stud. ca. 43.
fo. 139.
22 E. 3. Baldwin Frevis
Case.
‡ Ante § 8.
‡ Post. 145. b. 268. a.
(c) 18 H. 6. 23 b. per
Alscough. 3 H. 4. 16.
46 E. 3. bat. 217.

me, and not to any other which he shall purchase after; as by our Author in this Section
may justly be collected.

Sect. 178.

Mes si le Roy ad un villein purchase terre, & bien devant que le Roy entra, uncore le Roy poit enter, en que jaines que la terre viendra. Du si le villein achata biens, eur vendist devant le le Roy seist les ens, uncore le Roy ne seist les bens en le maines que les ens sont. Quia nul tempus occurrit Regi.

But if the King hath a villein who purchases Land, and aliens it before the King enter, yet they King may enter, into whose hands soever the Land shall come. Or if the Villein buyeth goods, & sell them before that the King seizeth them, yet the King may seize these goods in whose hands soever they be. Because *nullum tempus occurrit Regi.*

Si le Roy ad Vil-
lein, &c. Vide sect. 125.
Vid. Stanf prae. § 32. 25.

This is evident upon that
which hath been said before.

Tou si tel Vil-
leine achata biens, &c.
If the Kings Villein acquire
any Goods or Chattels, the
property of them is in the
King before any seizure or of-
fice: and it is well said of an
ancient Author, (d) Al Roy (d) Mirror c. 3.
quant al droit de la Corone ou
a frank estate ne poet nul temps
occurre: and another (e) (e) Britton fol. 88.
speaking in the person of the Brad. I. i. quz res Do-
king saith, Nul temps nest li- mini possiat.
mit quant a mes droits.

Sect. 179.

Item si homme lessa-
ter pur term de vie, sa-
nt le reversion a lui, &
villeine purchase del
soz le reversion: en cest
il semble q le Seig-
n del villein poit
tenant veni a la ter-
& clame le reversion,
ne le Seignoz le dit
leint, & per cel clame
reversion est mainte-
nt en lui. Car en autre
il ne poit tener a
reversion, car il ne
enter sur le tenant a
term de vie. Et sil doist
durier tanque apres
mort le tenant a term

Also if a man let cer-
tain Land to another
for term of life, saving to
himself the reversion, and
a Villeine purchase of the
lessor the reversion: in this
case it seemeth that that
Lord of the Villein may
presently come to the
Land, and claim the rever-
sion as the Lord of the said
villein, and by this claim
the reversion is forthwith
in him. For in other form
or manner he cannot com-
to the reversion, for he
cannot enter upon the ter-
nant for life. And if he
should stay until after the
death of the Tenant for

Poit main-
tenant ve-
ner a la terre.

For he cannot
claim the reversion ¶ Co. 146.
but upon the Land, ¶ 2 Rot 561, 562.
and he by his com-
ing upon the Land
soz that purpose is
no Trespassor, be-
cause the Law gi-
veth him power to
claim the reversion,
lest he should be pre-
vented, and claim
he cannot unless he
commeth to the
Land. So like-
wise if the Villein
purchase a Seig-
nory, Bent, Com-
mon, or any other
Freehold or Inhe-
ritance out of any
Lands or Tene-
ments of another,

the

Vide 41 E.3. tit. Audita
querela 18.
12 H.4. tit. Execution.
28 F.N.B. 104.
2 H.7.15.b.

the Lord may lawfully come to the land to make his claim to th: Seignior, rent, or other profit out of the Land. But if the villein purchase a Seignior, or a Rent, Common, or other Inheritance, issuing out of the Land of the Lord himself, it is said that the Seignior, Rent, Common, or other Inheritance, is extinguished in the Lords possession without any claim.

I Grant. Here must be intended an Attornement: for after the grant and before attornement the Lord may not claim the Reversion.

I En la vie del tenant pur vie, &c. Hereby (&c.) is included Tenant in Tail, Tenant pur autre vie, Tenant by Statute Merchant, Staple, Elegit, and so forth, for during all these estates the Lord may claim the Reversion, as well as in case of the Tenant for life.

Sect. 180.

† 7 Co. 25.
13 H.14.b.

Fleta lib.5.cap.14.

IA Dvowson. Advocatio, so called, because the Right of presenting to the Church was first granted by such as were Founders, Benefactors, or Maintainers of the Church: viz. ratione fundationis, as where the ancestor was founder of the Church; or ratione donationis, where he gave the soil whereupon the Church was built: and therefore they were called Advocati. They were also called Patroni, and thereupon the Advowson is called Jus Patronatus. And in one word, advowson of a Church is the Right of presentation or collation to the Church. Advocatus est ad quem pertinet Jus advocationis alicujus Ecclesiae, ut ad Ecclesiam nomine proprio, non alieno, possit presentare. Every Church is either presentative, collative, donative, or elective. Vide Sect. 645, 648.

‡ Post. 344.d.
24 E.3.30.25 E.3.47.
38 E.3.9. 44 E.3.3.
9 H.6.31.22 H.6.27.
21 E.4.34. b. Vide Sect. 648.
10 H.6.7.
‡ 6 Co.12.

I Plein dun Incumbent. If the Church be presentative, the Church is full admission in institution against any common person; but against the King it is not full until Induction.

I Incumbent cometh of the verb Incumbo, that is, to be diligently resident, id obnoxie operam dare: and when it is written Encumbent, it is falsely written, for it ought to be Incumbent, as Littleton hath it here. And therefore the Law doth intend him to be resident on his Benefice.

vie, donques per cas il viendra trop tard. Car peradventure le villeine voile granter ou alien le reversion a un autre en la vie le tenant a term de vie, &c.

life, then perchance he should come too late. For peradventure the villein will grant or alien the reversion to another in the life of the tenant for life, &c.

IE mesme le maistre est, lou un villeine pchase un Advowson dun Esgl' plesin dun incumbent, le Sñr del Villeine post venir al dit Esglise, & claime le dit advowson, & per cel claime ladvowson est en lui. Cat si d'ost attendre tanque apres le mort incumbent, & adonque a presenter son clerke a le dit Esglise, doneque en le meane temps le villeine post aliener le advowson, & issint ouste le Seignior de son presentment.

IN the same manner it is, where a villein purchases an advowson of a Church full of an incumbent, the Lord of the villein may come to the said Church, and claim the said advowson, and by this claim the advowson is in him. For if he will attend till after the death of the Incumbent, and then to present his Clerk to the said Church, then in the mean time the Villein may alien the Advowson, and so oust the Lord of his presentment.