Of Fealty. Sect. 91.

Fealty

FEALTY, idem eft quod fiditas in Latin. Et quum franktenant fera fealty, fio feignor, tiendra fa maïne dextor fur livere et dirra ieffis; Com oye vous mon feignor, que je a votre ferra foyal et loy- al, et foy a vous portera des temenentes que je claine a tenir de vous, et que totalment a vous ferra les cuyfomes et fercives, quez faire a vous voy, a termes af- fignés, fiomo my aide Dieu et fes Saints; et faufer le livere. Elle ne genemera quanf faut fealty, ne ferra tiel humble reverence, come avant eft dit en hommage.

(1) See Poët 100. h.—The Batate of 13. Chun. 5. 24, which was made to free the fideheft from the burthen of knight's fer- vice and the apprêvé confumptions of tenures in capite, among others provisions wholly discharges all tenures from the in- cident of homage, as not because hommage itself was any grievance, but because, though not wholly, yet it was more properly in af- fociate to knight's service, which the fixture abolishes.

But whilome hommage continued, it was far from being mere ceremony, for the performance of it, where it was due, materially concerned both lord and tenant in point of interest and advantage. To the lord it was of confectionate, because till he had received hommage from the heire he was not invested with the authority of him of his lord; and the lord had the feignories for life or years only, in which case he could not take hommage and therefore was allowed without service. Dominus (in Magna Charta expressit eis non habent ejusdem ejus, see terra frig, antequam homansom signet), which words it is said import, not that the lord could not have the fee dom of the heire unless he had actually received hommage from the steward, but only that he could not have it till it was received from the heir. See 5. H. 1. cap. 1. and 1. Inst. 1. and 2. Inst. 10. To the tenant the homage was force of his importance; for assenting every kind of homage when received, but not before, bound the lord to acquit or perform answer, that is both to tenant the tenures and to keep the tenant free from the duties which were allowed without service. Dominus (in Magna Charta expressit eis non habent ejusdem ejus, see terra frig, antequam homansom signet), which words it is said import, not that the lord could not have the fee dom of the heire unless he had actually received hommage from the steward, but only that he could not have it till it was received from the heir. See 5. H. 1. cap. 1. and 1. Inst. 10. To the tenant the homage was force of his importance; for assenting every kind of homage when received, but not before, bound the lord to acquit or perform answer, that is both to tenant the tenures and to keep the tenant free from the duties which were allowed without service. Dominus (in Magna Charta expressit eis non habent ejusdem ejus, see terra frig, antequam homansom signet), which words it is said import, not that the lord could not have the fee dom of the heire unless he had actually received hommage from the steward, but only that he could not have it till it was received from the heir. See 5. H. 1. cap. 1. and 1. Inst. 10. To the tenant the homage was force of his importance; for assenting every kind of homage when received, but not before, bound the lord to acquit or perform answer, that is both to tenant the tenures and to keep the tenant free from the duties which were allowed without service. Dominus (in Magna Charta expressit eis non habent ejusdem ejus, see terra frig, antequam homansom signet), which words it is said import, not that the lord could not have the fee dom of the heire unless he had actually received hommage from the steward, but only that he could not have it till it was received from the heir. See 5. H. 1. cap. 1. and 1. Inst. 10. To the tenant the homage was force of his importance; for assenting every kind of homage when received, but not before, bound the lord to acquit or perform answer, that is both to tenant the tenures and to keep the tenant free from the duties which were allowed without service. Dominus (in Magna Charta expressit eis non habent ejusdem ejus, see terra frig, antequam homansom signet), which words it is said import, not that the lord could not have the fee dom of the heire unless he had actually received hommage from the steward, but only that he could not have it till it was received from the heir. See 5. H. 1. cap. 1. and 1. Inst. 10. To the tenant the homage was force of his importance; for assenting every kind of homage when received, but not before, bound the lord to acquit or perform answer, that is both to tenant the tenures and to keep the tenant free from the duties which were allowed without service. Dominus (in Magna Charta expressit eis non habent ejusdem ejus, see terra frig, antequam homansom signet), which words it is said import, not that the lord could not have the fee dom of the heire unless he had actually received hommage from the steward, but only that he could not have it till it was received from the heir. See 5. H. 1. cap. 1. and 1. Inst. 10. To the tenant the homage was force of his importance; for assenting every kind of homage when received, but not before, bound the lord to acquit or perform answer, that is both to tenant the tenures and to keep the tenant free from the duties which were allowed without service. Dominus (in Magna Charta expressit eis non habent ejusdem ejus, see terra frig, antequam homansom signet), which words it is said import, not that the lord could not have the fee dom of the heire unless he had actually received hommage from the steward, but only that he could not have it till it was received from the heir. See 5. H. 1. cap. 1. and 1. Inst. 10. To the tenant the homage was force of his importance; for assenting every kind of homage when received, but not before, bound the lord to acquit or perform answer, that is both to tenant the tenures and to keep the tenant free from the duties which were allowed without service. Dom
Section 92.

ET grand diversitie y ad per enter feasale de fealtie et de hommage; car hommage ne poit etre fait forse al feignir meme, mes le feignir de court al feignir, ou bailiff, pouit prendre fealtie pur le feignir.

A ND there is great diversitie bee twixt the doing of fealty, and of hommage; for hommage cannot be done to any but to the lord himself; but the twerrd of the court, or bailiff, may take fealty for the lord.

Section 93.

ITEM tenant a terme de vie fer
data fealtie, et encore une ferrarhammadge. Et divers autres diversitie y font preter hommage et fealtie.

ALS O tenant for terme of life shall doe fealty, and yet he shall not doe hommage. And divers other diversitie there bee twixt hommage and fealty.

Section 94.

ITEM home poit veir 15. E. 3. comen home et fa feme feront hommage et fealtie common banke, que lutt efitrit devant en tenure of hommage.

ALS O a man may see in 15. E. 3. a how a man and his wife shall doe hommage and fealty in the common place, which is written in before the tenure of hommage.

A HIS is evident and appeareth before; and if lords knew what benefit they may reape by receivinge of fealty and ferrarhammadge, they would not neglect them; [c] for the receivinge of either of them, it is sufficient benefit of all manner of services, as by the words [f] of either of them appeareth, Ech. 27.

(1) In some countries on the continent of Europe hommage and fealty are blended together so as to form an engagament, which being so cannot be without the other; and therefore foreign jurists frequently consider them as synonymous. But lord Coke, notwithstanding his saying, that fealty is a part of hommage, apparently doth not mean to confound them; for in our law, whilst such continuall, they are in some respects distinct, and though fealty was an incident to hommage and ought always to have accompanied it, yet fealty, as lord Coke himself tells us, might be by itself, being sometimes done where hommage was not due, and would have been improper, and in the two next mentioned Luttenberg strongly marks the difference between the two. In short by our law hommage was inseparable from fealty, but fealty was not so from hommage. See note 67. b. Polt 159. b. 151. 5. and Wrights Ten. 55. note. (d) and Dr Preus. Gloss. C. 150. E 5. 612. and 613. (e) This is not strictly accurate; for the words "s "are ambigous, and it is therefore of the essence of fealty not to comprehend the same form of hommage, nor were the words "I will faithfully do you the services and forswear which I ought to do to you at the terms agreed." Another difference between the two in point of expression was, that the person doing fealty did not lay, he bound himself in the manner of the engagement by hommage. Alas in fealty there is not any exception of fault to the king or other lords, which forming to be intended as a qualification of the peculiar words of hommage, I became your man, might perhaps on that account be thought unnecessary in fealty. See note 65. a. and note 13. in 66. b. and Polt 159. b. 151. 5. See note 13. of 66. b. It is oldfashioned, that is, that it does not appear by the extract from the record of the bishop of Exeter's case, what punishment was inflicted on the bishop for receiving hommage without the exception of faith to the king. But this was a mistake, for the extract mentions the fact to have been done for 15. E. 3. and to Dr Courtenay it to have been done in this case no authority is vocal. See Bailly. Leg. 159. It is apparent that there is a want of reference to authorities through the whole of the same ingenious book; a deficiency very much to be lamented, as it renders that work, which is particularly valuable for the convenience of the author's history of hommages and fealties, so worthless in respect of fidelity to facts, much less useful than it would otherwise be. [c] See the note on this supposed statute in 66. b. note. (g) Vid. fealty done by attorney. Petreius de Orlanda miles regis Scotiae recognoscens sibi jurati regis in nomine et nomine domicilii suo cum omnibus terris de Frenanti Tindal et Beatone. Polt. 157. 159. and 161. This is an insufficient influence of fealty of attorney, and certainly by our law was an irrelevancy. But each lord could take an oath be taken in that gurman for even in Bradshaw's time, hommage could not be done by attorney, and much less could an oath be taken in that country. In some countries they are not so frail, particular is France, where both hommage and fealty may be done by proxy, if the lord gives his consent, and by the custom of some of the French provinces without. See 65. Pi. et Hommage in Divit. Nomin. Divit. (f) Vid. that such fealty and did not obey the tenant from removing the fealty of other services. 66. b. see further as to the advantages accruing from the receiving of hommage and fealty, note 65. b. and Polt 159. b. and note 13. in 66. b.
Lib. 2. Cap. 2. Of Escavage.

what difference is there between the oath of fealty, when it is done to the king in person of attaint, and the oath which every subject ought to take in respect of his allegiance, Littelton here feteth down the oath of fealty. Now the form and length of the oath is this, you shall swear, &c. (1) Then it may be demanded, where and when is this oath to be taken, and it is answered, that whatsoever is the age of twelve years, is to be sworn in the summer, unless he be within four leet, and then in the late (2) line. In the reign of Edward the third, in the reign of Saint Edward (3), the same was henceforth called that oath, which afterwards was called the oath of allegiance.

§ 1. Escavage. Of Escavage, or Latin Scutage, is a service of the shield. Hereby it appears that right interpretations and etymologies are necessary: for ad cellas decussam opes populi insinuare antea, quin suum rerum regalis aut munitionis rerum dependeat. (Poll 86 b. 177 a.)

And whereas agree that which is fit and meet, Primo conditiones offerentur, non formosae offerentur arbitror armatur, nec fata argumenta. Scutum in French is Eysis, and thereof commuteth the Eys, (1) Et singul, which we usually call Descuits. (2) Of this Breton faculty, Iren fesus, fesus, fesus ad defension currantes, ad tuum aequum. Scutum in Latin is Escus, and thereof commuteth the Esque. (1) (2) (3) (4) (5) (6)

§ 2. Escavage. In Latin Scutagium, that is, service of the shield; and that tenant, which holdeth his land by escavage, holdeth by knights service. And here it is commonly said, That some hold by the service of one knight's fee, and some by the service of the half of a knight's fee. And it is said, That when the king makes a voyage royal into Scotland to subdue the Scots, then he, which holdeth by the service of one knight's fee, ought to be with the king forlic days, very well and conveniently arrayed for the war. And he, which holdeth his land by the moitie of a knight's


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(1) The form of the oath of allegiance may be seen in the books cited in the margin; but it has been changed by several statutes made since the revolution, and their iniquous quakers with signing a declaration of fidelity instead of taking the oath. See Burnes Justic in Darks and Com. Dig. tit. Allegiance. In lord Hale's History of the Bills of the Crown, there is a very learned dissertation on the old oath of allegiance, in which his lordship explains how it differs from the oath of fealty to the king by rest of tenures. He also discusses largely on the subject of hommage, and points out the several differences between Roman, Saxon, and Norman law, and English statute law. See 1 Cal. Hist. P. C. 63, to 75. This curious part of lord Hale's work did not occur, till it was too late to give the benefit of it to the notes in the chapter of Homage (3). How the taking of the oath of allegiance is regulated by modern statutes, see Com. Dig. tit. Allegiance and Burnes Justic in Darks, 6th ed. pp. 43—45. As to the time of Edward the Confessor, the number of the year is in print, but by the name of Mr. Bicker. See Lee, Hist. of Eng. Lit. Sept. Diff. Ed. 95—(1) Mr. Lambard, who published the first edition of the Anglo-Saxon Laws, informs his reader, that the law called Edward the Confessor's was printed from two manuscripts, and that one of them was very ancient, but the other not so old, and it appears, that this strange tale, about king Arthur's conquering the whole island of Britain, was not the more ancient manuscript. See Lamb, Archidonom. 134. A learned writer on Brit. antiquities, who apposes to have taken great pains to point out the real translations of Arthur, thought a warm advocate for great part of his history, and not professed to write for this tradition concerning him. See Lamb, Archidonom. 134. ed. in v. 170, 171—(2) The law with regard to feudal precedents of the same as when lord Coke wrote, is as it was valued as it is approved by the 22 Ch. 1. 24, or any other statute made since his time. But it is no longer the practice to express the statutes of the older code. In the case of copyholders, it becomes a thing of course, admitting them to enter a return of sales, but with respect to such as hold by any other tenure, it is as yet not allowed to remember of. However it must be observed, that the title to fealty still remains, that it is due from all tenants except tenants by franklinage and such as hold at will or by free

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(4) Mr. Milton in his Brutus, Angl. 87, animadverts upon this edition of Littelton to which he refers n. 3. 64, &c. and the note at the end of this chapter of appella D 7 1. This in a former place, a doubt is expressed as to the book by Dickens in the preface, attributes the origin of the feudal precedents principally to the northern nations, which in the fourth and fifth
Et il tient fermé avec une serrure qui tient bien terre pour que le fer n'y pénètre ni pour service ni pour fuite de châtiment.

[...] On peut vous en parler plus longtemps que vous ne le demandez, car il est un sujet si intéressant. Je vous le dirai si vous voulez bien m'écrire de retour. ...

[...] J'ai également appris que les soldats sont bien traités et qu'ils ont de la nourriture à volonté. Ils sont logés dans des maisons bien construites et bien chauffées. Le climat est doux et les jours sont ensoleillés. Les officiers sont respectés et bien payés.

[...] Il y a aussi des écoles pour les enfants, où ils apprennent les langues vivantes et les sciences. Les écoles sont libres et gratuits pour les habitants de la ville. Les enfants y sont heureux et les parents sont contents.

[...] J'espère que vous pourrez me donner des nouvelles de la maison et des amis. Je vous prie de me donner des nouvelles de ma mère et de mes frères. Je vous en prie au nom de Dieu. ...
Cap. 3.  Of Escueau.

West. Et ob. de.

Sect. 95.

Weather.

... Cap. 3.  Of Escueau.

And hee, that is to say, the right of the stock, or as it may be called, the fourth part of their yearly revenue, as of a knight five pound, which is the fourth part of 20.

... Cap. 3.  Of Escueau.

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But it appeareth by the pleas and arguments made in a plea upon a writ of detinue of a writing obligatorie brought by one H. Gray, T. 7. E. 3: that it is not needfull for him, which holdeth by eicuage, to go himselfe with the king, if he will finde another able perfon for him conveniently arrayed for the warre to goe with the king. And this feemeth to be good reason. For it may be, that he which holdeth by such service is languishing; so as he can neither go nor ride. And also an abbott or other man of religion, or a feme folle, which hold by such services, ought not in such cafe to goe in proper perfon. And Sir William Herle then chiefe justice of the common place fled in this plea, that eicuage shall not be granted but where the king goes himselfe in his proper perfon. And it was demurred in judgment in meane the ple, whither the 40 days should be accounted from the first day of...
Lib. 2.  
Cap. 5.  
Of Escuege.  
Sect. 96.

The murther of the king's hoft made by the Commons and by the commandement of the king, or from the day that the king first entred into Scotland: Therefore inquire of this.

Et eco femelle bona reagan, &c. Here Littleton throweth three reasons wherefore the tenant should not be concerned to doe his service in person.

First, it may be the tenant is laske, our he is neither able to goe nor ride. And ever such construction must be made in matters concerning the defence of the realm or common good, as the same may be effectef and performed. To the former disability may be added where a corporative aggregate of many, as danae and chapter, minor and commonalty, &c. or an infant being a purchaser, for thefe afo must finde an able man. But it may be objected, that in these particulars the tenant might finde a man, but then when he is able is without all excuse or impediment. To this it is answered, that depotes recuperi aire. And the end of this service is for defence of the realm, and so it be done by an able and sufficient man, the end is effectef.

Secondly, seeing there are so many just excuses of the tenant, it were dangerous, and tending to the hindrance of the service, if thefe excuses should be liable, Malta in jurie communis contra rationem dispositur pro communie utilitate introducta first.

Lastly, both Littleton, and the booke in the seventh of Edward the Third, give the tenant power, without any case to be theved, to finde an able and sufficient man, and oftentimes juris publica ex fruenda praevenda decet non debeat.

Un abbe ou autre homne de religion. Note, that if the king had given lands to 2 аббати, and his successeors to hold by knighd service, this had beene good, and the abbot thereby doe homage and send a man, &c. or pay escuege, but there was no warrant or reliicie or other incident belonging thereto. And though the law faith, that this was a manifeste, that is, that they held fast their inheritance, yet if the abbot, with the silent of his convent, had conveyed the land to a natural man and his heirs, now wardship and reliicie and other incidents belonged of common right to the tenure. And so it is, if the king give lands to a man or commonalty and their successeors, to be holden by knights service, in these the parents (in both borne fath) shall doe no homage, neither shall there be any wardship or reliicie, only they shall send a man, &c. or pay escuege. But if they convey over the lands to any natural man and his heirs, nor ward, nor marriage, nor reliicie, and other incidents belong henneto. And yet this possibilitie was remote possibilitie, but the reason henneto, Ceo stimat ratione legis eppet igitur lex, the reason of the immunitie was in respect of the body politique, which by the conveyance over coelest, which is worthy of the observation.

And it is to be obserued, that every bishop in England hath a baronie (2), and that barony is holden of the king in espioe, and yet the king can neither have wardship or reliicie.

If two or more lands be of land holden by knighd service, if one with the king, it is sufficeth for both, and both of them cannot be compelled to goe, for by their tenure one man is onely to goe.

If the tenant peravalle goeth, it is discharged the meene; for one tenaney shall pay but one escuege.

On auter homne de religion. Here this word (religion) is taken largely, min. not onely for regular, or dead persons, as abbats, monester, or the like, but for secular persons also, as bishops, parsons, vicars, and the like; for neither of them are bound to goe in proper service. For nos multos Dei impliciter sanctiores sequuntur. 

Languishing. So it may be said of an idole, a mad man, a leper, a man maymed, blind, deote, of deceitful nigc, or the like.

On fem folte. Seeing that a fem folte, that cannot performe knighd service, may serve by deputy, it may be demanded wherefore an heire male being within the age of 21 yeares pro exercitia Britanici ad tres marcas et non solutem. Note temporis Henrici tertii transgissium Ludowici des manus anna frondos, Rhann des. anno canendi; montis des manus anna offerta, Bedford des manus anna celium, Kent des manus anna decimo tertio, Brecon des. anno decimo quarto, Pembridge des. anno decimo quinti, Blain des. anno decimo sexto, Glossexys des. anno vicecento incolis, Gower des. anno vicecento nono, Wiltsh des. anno quingenteno incolis, Hali. Mbi. For a more particular account of the escueges alluded in the several reigns mentioned by lord Hali, see Mad. Hilt. Excugie, chap. 18, where the whole subject of escuege is fully explained from the records. See also fol. 72 a. and b. 

(1) Mr. Madox observes, that Sir William Heres's petition, that escuege should not be granted but where the king goes to the war in person, is fullitto. Mad. Bror. Angli. 628.

(2) Lord chief justice Prior, in a manuscript treatise on the Jura Coronae, gives it as his opinion, that the bishops do not hold their possessions per hereditatem, and that they sit in the house of peers by cession and aifage, and not as baronie. But the propriety of his position has been obly controverted by a writer of very great eminence now living. See Whitby. Alliance between Church and State, 4th edit. 169. 2. St. R. 174. 8. 11. 12. 13. 14. 

is the only true way of exploring the source of the feudal institutions; but this is not the place for a minute discussion of a subject
years may not be served also by deputy, being not able to serve himself.

To this it is answered, that in cases of minority, all is one to both sexes, viz. if the heir male be at the death of the ancestor under the age of one and twenty, or the heir female under the age of ten, they can make no deputy, but the lord shall have wardship as an incident to the tenures; therefore Littleton is here to be understood of a free hold of full age, and seized of land with knights service either by purchase or descent.

_Covenableness arrate pur le guerre._

So as here are four things to be observed.

First (as hath been said) that he may find another.

Secondly, that he that is found must be an able person.

Thirdly, he must be armed at the costs and charge of the tenant, and herein is to be noted, the manner of armure shall be arrayed with, for time and occasion alter the manner and kind of the armure.

Fourthly, he must have such armure, as shall be necessary, and so appointed in readiness.

For a knight is a free man in all respects, with what manner of armure the faulder shall be arrayed with, for time and occasion alter the manner and kind of the armure.

It is truly said, good miles have true curata debet, cepitus et validissimum et penicillus habitat, licet armis opifices facint in custodiis, castoriae Deo et imperatoris curtis off. Eftociun sitio fuerit in nova gradu, sed una sola, non se neuesse dicit. Qui sequatur opus evertit Venetian.

Utiam cuiusdam ars cuiusdam hostium, si fuerit facit omnium, quas suae. Et si opus sit eum ac vices, et cabere possint tempori. Multum pelet in robur humanam Publicam, oculus, plurimum in bellum.

Quodam succurrurium, quam teuerre finger armis, quibus soli eoff off poffis. But I will take my leave of these excellent authors of art military, and refer to them to those that profess the same, and will return to Littleton.

_Muller._

I finde this word in the statute of 18. H. 6. cap. 19, and the ancient military order is worthy of observation; for before and long after that statute, when the king was to be served with soldiers for his warre, a knight or esquire of the country, that had received a certain arme or armament, would covenant with the king, by tenure intailed in the escheuer, to serve the king for such a term with so many men (especially named in a list) in his warre, &c. an excellent institution that they serve under him, whom they knew and had been used to serving, and whom they must live at their return. Those men being murdred before the king's commissaries, and receiving any part of their wages, and their names so recorded, if they after departed from their captain within the term formerly to the form of that sort and degree. But now that statute is of no force; because that ancient [5. book 86. Co. Cha. 173.] and excellent form of military course is altogether annihillated; but later statutes have provided for that mischile.

To be a muller is to be to make soldiers well armed and trained before the king's commissaries in some open field. Utile adfuturate praebeat fides. In Latine it is eserviores, seu inserviores exercitum.

By the law before the conquest mullers and showing of armure should be uno eodem die per most. 135. b. assuming regnum, nisi quis habet arma familiares et notis commendaretur, ut iijlfam am vocet capi, ut jus armiffi militis, et dominii regis et regnum offerant.

Concerning the point in law, demurred in judgment, in the seventh Edward the third, here mentioned by our author, the law assumed the beginning of the forty days after the king entered into the foreign nation; for then the war begun, and till he come there, and he and his host be sent to goe towards the warre, and no military service is to be done till the king and his host come thither.

_Sir William Herle._

A famous lawyer constituted chiefe justice of the Common Pleas by letters patent dated, a dicit Martis anno 5. E. 3. It appeareth by Littleton, and by the record, that he was a knight, against the concion of those, that think, that the chiefe justices of the court of Common Pleas were not knighted till long after. The solemn flourish, that it is no life what the knowledge of the law is like a deep well, out of which each man draws according to the strength of his understanding. He that reaches deepest, he draweth the sublime, and admirable secrets of the law, whereas, I suppose the senses of the law in this court (which is now Sir William Herle was a principal one) have had the deepest reach. And as the depth in the bucket is easily drawn to the uppermost part of the water, (for water elementum in usu proprius loco eoffe) that draws it from the water, it cannot be drawn out with so much difficulty: so albeit beginnings of this study from difficult, yet whereas the professor of the law can dive into the depth, it is delightful, curious, and without any heavy burden, so long as he keep himselfe in his owne proper element.

_NS_.


2 _Sic etiam._ Unus proxime, et tene consuetudinem literarum huminem, habet se secutus, et capellum servat, et lanceam. Et quss habet arma habebat aliam, arma factum remanserit lucarem, et ars in mortem habebat, et ad eam tenet in servitio regia. Haec vis, ideo esse recitati Christi. 5. libro, ch. 21. Quiqueque habet necessarium in actibus, et certandum, et commissariis, et in eam die festum ad se scire, et ase in eam die festum ad se scire, et ase in eam die festum ad se scire, et ase in eam die festum ad se scire, et ase in eam die festum ad se scire.

Juricke. In Glaniel he is called justicia in ipso abstructa, as it were justicia infelie; which appellation remains still in English and French, to put them in mind of their duty and foundation in the true. And so in Legumin they are called justiciae in ipso justicia in consuetudine, and they are called justiciarum de busse, etc. and never justicie de busse, etc.

Commoun banke. Banke is a Saxon word, and signifies a bench or high seat, or a tribunal, and is properly applied to the justices of the court of Common Pleas, because the justices of that court sit there in a certain place: for all writs returnable unto that court are curiam justiciarum negoti et delinquens, or any other certain place where the court sat; and legal records require them justiciarum de busse. But writs returnable into the court called the King’s Bench both because the records of that court are filled (as hath been said) in curiam rege, and because kings in former times occupied very respectfully for that (1). For the antiquity of the court of Common Pleas they add, that hold that before the statute of Magna Charta there was no court of Common Pleas, but he had his creation by or after that charter; for the learned know, that in the fift and twentiethe year of Edward the Third, the abbot of B, in a writ of affix brought before the justices in Exche claimed consuenance and to have writs of affix, and other original writs out of the king’s court by praecipiation, time out of mind of man, in the reigns of King Edward, and Saint Edward the Confes-

(Disc. Pict. 175. 5 Co. 204.)

Demurrer et judicium. A demurrer committs of the Latin word demuriri to abide; and therefore he, which demurrit in law, is said, he that abideth in law. Meretur or demurrit in leges. Whenever the council learned of the party is of opinion, that the count or plea of the adverse party is insufficient in law, then he demurrit or abideth in law, and reformeth the form to the judicium of the court, and therefore well Littleton here, demuro et judicium, the words of a demurrer being non narratio. et materiae in codice contenta minus justitiae in leges custodi. et, si et de a ple, quia praetulit, et et materiae in codice contenta minus justitiae in leges custodi, et, unde pro default justiculis narrationis in ple. et petit judicium, etc. But if the plea be sufficient in law, and the matter of told be false, then the adverse party taketh finding thereupon, and that is tried by jury; for matters in law are decided by the judge, and matters in fact by juries, as elsewhere is said more at large.

Now as there is no issue upon the faul, but when it is joyned between the parties, so there is no demurrer in law, but when it is joyned; and therefore when a demurrer is offered by the one party as is aforeaided, the adverse party joyneth with him, (for example) faith, quod praecipitum praeclaram, etc. materiae in codex contenta minus justitiae in leges custodi, etc., et petit judicium, etc. and thereupon the demurrer is said to be joyned, and then the cause is argued by counsel learned of both sides; and if the parties be difficult, then it is argued openly by the judges of that court, and if they be or the greater part concurren in opinion, accordingly judgiment is given; and if the court be equally divided, then it is decided by them, or else: is there anything of that opinion (it shall be decided by them) to be argued by a prudie, two earles, and two barons, which shall have power and comission of the king in that behalfe, and by advice of themselves, the Chancellor, treasurers, the justices of

(1) But though formerly our kings did actually sit in the court of King’s Bench, and the law still intends that the king is present there, yet the judicature belongs to the judges only, as Lord Coke elsewhere observeth. 4 bull. 73. See further on the subject in Black, Comyn’s ed. 3r. and 4r. fol. 32d. 1874, 1876, 55. 2. 
(2) From the whole of Lord Coke’s observations here and in the prefacc to his eighth book of Reports, it seems to have been his opinion, that the court of Common Pleas was not only a court of record at the time of making the Magna Charta at the 18th of Hen. 3. but also existed as such before the conquest. But according to Mr. Madox, whose inquiries into the subject were certainly more minute and particular, the origin of the court of Common Pleas is of a much later date. He is far averse with Lord Coke

ad exaginitis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, annum honorem unum capelli terrae frumenti graudium et castra, etc., ad decem librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad quindecim librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quaedam librarum tera, anno honorem unum capelli terrae frumenti graudium et castra, etc., ad sexagintis annos, adhiberi et jurare ad ruram eclogam quantissimam terrae et castrorum, sibi, act, ad quae

The one beech and the other, and other of the king's counsellors, as many and such as shall seem convenient, shall make a good judgement, &c. And if the difficulty be so great as they cannot be determined by the lords in the upper house of parliament. See the statute, for it extends not only to the case above said, but also where judgments are delayed in the Chancery, King's Bench, Common Bench, and Exchequer, the justices adjug'd, and other judges of Oyer and Terminer, by difficulty, futility, or else others opinions of judges, and futilities for other cases. [a] Before which futilities, if judgment were not given by reason of difficulty, the doubt was decided at the next parliament, (which then was to be held once every years at the ball.) [b] If antua judic. munim prae curo non, et obstrum omen fisticum judicium, tum paulatim judicium in respetit utis ad magnas causas, ut in prorsum causis etiam terminas. But heretofore such things futility. [c] He that decrees in law cases all such matters of fact, as are well and sufficiently present. If there be a decrees for part and an issue for part, the more orderly courtesies to give judgment upon the decrees first; but yet it is in the discretion of the court to try the issue first, if they will. After decrees join'd in any court of record, the judges shall give judgment according as the very right of the cause and matter in law shall appear, without regarding any want of form or any writ, return, plaint, declaration, or other pleading, process, or cause of proceeding, except the only which the party decrees shall specially and particularly set down and express in his decrees. [d] Now what is falsity and what is forme you shall read in my Reports.

And in some cases a man shall allege special matter, and conclude with a decrees; [e] if in an action of trespass brought by I. S. for the selling of his horse, the defendant pleadeth that he him selfe was poisned of the horse whilst he was by one I. S. distilled, who gave him to the plaintiff, &c. the plaintiff hath I. S. named in the barre, and I. S. the plaintiff was in all points and not divers, and the pleas were not the pleas pleaded by the defendant in the former messuage, it was decreed in law, and the court did hold the pleas and decrees good for matter, without the matter alledged he could not decrees. Now there may be a decrees upon counts and pleas, so there may be of a priyer, vouched, revers, queuing, of law, and the like. [f] By that which hath been said is appeareth, that there is a general decrees, that is, flowing no cause, and a special decrees which floweth the cause of his decrees. Alto by which that hath been said, there is a decrees upon pleading, &c. and there is also anew decrees upon evidence. [g] As if the plaintiff in evidence shew any matter of record, or decree or writings, or any evidence in the ecclesiastical court, or other matter of evidence by testimonies of witnisses, or otherwise, whereupon doubt in law arises, and the defendant offer to decrees in law thereupon, the plaintiff cannot refuse to join in decrees, no more then in a decrees upon a count, replication, &c. and so every man may the special decrees in law upon the evidence of the defendant.

But if evidence for the king in an information or any other felle be given, and the decrees offer to decrees in law upon the evidence, the king's counsel shall not be infracted to joine in decrees; but in that case, the court may direct the jury to flinde the special muniments.

En judgement.

For the signification of this word, Vide Sect. 366.

Sect. 97.

And after such a voyage royally in to Scotland, it is commonly said, that by authority of parliament the eescuage shall be affixed and put in certaine: for a certaine summe of money, how much every one, which holdeth by a whole knight's fee,
Lib. 2.

Cap. 3.


[4] and this was by the common

law (1).


Rot. in Deo, mem. 30. & ann.

[5] No cague was affixed by parliament since

the reign of Edward the se-
cond, and in the eight years

of his reign cague was affixed

(2).

(1) The Magna Charta of King John provides, that cague shall not be imposed except by the consent of parliament, but some repubilical writers think, that it was an arbitrary payment before. Blacklack's Comment. p. 2. v. 2. p. 74. Dr. Wright's Ten. vol. i. 113. (2) See ante 69. b. note 5.

Suff. P. 49. E. 2. 4. h. c.

F. N. E.

Both lib. 2. 35. 4.

F. N. E. 494.

Rot. Parl. p. 3. 2. 51. 402.


Auscus tieg

nant per

cufome, &c.

Nas, that

cague is

directed by
cutfome.

Mes au- ter-

ment of de

cagoule certaines.

Here it appears, that cague is two-

fold, vis. cague incurred, whereas

Litt. here spuska;

e cague certain.

[6] Aucuns tieg- nant per la
cufome (6), que il cague
courge par autorité de

parlement a ofens

famme de money, que il ne

parront forzke la

moiety de ces, et ofens

trigont que il ne pay-

ront forzke le quart

part de ces. Mes il

cague que il parront,

eil non certain,

per que neff certeine

cement le parlement

(1) According to Mr. Maddox's account it seems, that the lords, though he did not gain in person, or send a deputy, was content to cague from his tenants, if he paid or was duly charged with cague to the king and perhaps lord Coke did not mean to intimate the contrary. Mad. Hist. in Deo, col. ed. 698. See however note a. infra.

(1) It seems, that if a hold land of the king be a knights fee, and A had done the king's service, he should have had the cague of 1/2 or half of the fee or as he left of 10. Vide Rot. Parl. 4. 2. timet. & lib. Parl. 19. E. 2. petitons magnatun inde. Clew. ed. 2. 6. m. 17. Vide vicennis Comunib precept, quod in timet virtute. Vide lib. Mad. Hist. in Deo, col. ed. 698. See however note a. infra.

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Sect. 98.

Of Ecuage.

per lug mene, ne per

un alter par luy ou

le roy, paiter a son

seigneur, de que il tient

la terre, par ecuage.

Siome mittonus, que

il fuit ordainz par au-

torité de la parliam-

ment, que chefeun, que

tient per toute fee de

services de chevalier, que

ne fait que le roy,

payera a son seig-

nier 40 s. daquant ce-

jus, que tient per moi-

tie dun fee de cheva-

ler, ne payera a son

seigneur forzke xx. s. et

celuy, que tient per la

quart part de fee de

chevalier, ne payera

forzke xx. s. et fic que

plus, et que

moins, moins.

AND some hold by the
cutfome, that if ecuage

be affixed by au-

thority of parliament at

any summe of money, that

they shal pay but the moi-

tie of that summe, and

some but the fourth part

of that summe. But be-

cause the ecuage that

they should pay is uncer-

taine, for that it is not cer-

taine how the parliament

will affixe the ecuage, they

hold by knights fer-

afferssers.

Winston, which commands, that every one shall be sworn to answer according to the value of their lands and goods, nisi, from lands of 15 to 20 marks and chattell of 50 marks, ad haubergerium capellum ferreum gliatium et celiatunum, et equum, from lands of 50 to 100 marks, et quod sunt incontinentes. Vid. ibid. 4. 2. timet. & lib. Rot. Rotb. 19. E. 2. petitons magnatun inde. Clew. ed. 2. 6. m. 17. Vide vicennis Comunib precept, quod in timet virtute. Vide lib. Mad. Hist. in Deo, col. ed. 698. See however note a. infra.
Of Escuage. Sect. 98, 99, 100.

afferyca leuage, en synong per servisce de civiuler. Mes averber-
ment est de leuage certaine, de qua servra parle en le tenure de
leuage.

vice. But otherwise it is of esuage certain, of which shall be spoken in the tenure of esuage.

tangit facit socculation. But

more of this in the chapter of Soccages, Sect. 100.

Per parlamentum, of the antiquite and authorite of this court, see Sect. 164.

Sect. 99.

ET si home parle generallmente de

escuage, il ferra entende per le common speech of esuage noncertaine, que est servisce de civiuler.

Et tiet esuage trait a by homage, et homage trait a by fe-

alty; car fealtie est incident a chefum manner de servisce forsyke a te

nuere en frankealmoigne, comme esuage dit apres le tenure of frank-

almoigne. Et iijent il, que tient per esuage, est per homage fealtie et es-

uage.

AND if one speake generally of esuage, it shall be intende by the common parlament de esuage incertaine, which is knights service. And such esuage draweth to it homage, and homage draweth to it fealtie; for fealtie is incident to every manner of service, unleffe it be to the tenure in frankalmoigne, as shall be said afterward in the tenure of frankalmoigne (1). And so he, which holdeth by esuage, holds by homage, fealty and esuage.

Sect. 100.

This is gathered by the effects of their tenure, for effects are found not by properties, sommuns by rivers, and caufes by effects: for amongst others, the lords shall have esuage of their tenants, &c. as it followeth.

ET est adefevient, que quant

esuage est tictemen of-

se per authority de parla-

ment chefum feignior, de que

le terre est tenus per esuage,

avera esuage iijint ofse per

parlament; pur cee que il est in-

(1) See see Med. Baron. Angl. 166.

(2) From this end to the next preceding section it seems, that notwithstanding Littleton's expressing himself in other places as if esuage was a diffilte tenure or service, he did not consider it as such. Esuage must be either certain or uncertain, and Littleton explicitly writes, that the former it is scarce, and the latter it is sable service. This tends to confirm the propriety of the observation by Mr. Madox, who will not allow esuage to be a tenure or service of little, and infifts, that, wherever it was payable, like homage and fealty, it was more incidet to tenure. See note 5, of fol. 46. a. However a late learned judge was not satisfied with considering esuage in this limited way, and endeavours to show, that though in general esuage uncertain

from 40. to head of 5. ad globum cultellum arcum et fugitives; et qui minus, justum ad globos cultellus et alla minuta ar-

um; et qui minus habuerit quant viginti marcosboorum, habet globos cultellus etalla minuta armas; et omnibus aliis arcum

tigitates; et in qualitatem hundendae dio confunabulari elipserant ad lasciandum viorem armorum. This office was observed in the
temps of Edwardi iij. et Edwardi the ad. 1o E. c. the tenure of Wintun was put into execution by papas forstulare annuatim bono-

or et castellorum pro prima ico, et secundus vice fies posses ctpilatam terram in minum regium et imprisonamento corporum, et

illa est aedificium armari et armis, ac in persona justorum armat parati sit ad profectandum eum regem servos com-

vulnibus necessariis, 37. quadrangulas dicam, suorum et aliorum de partibus sub servitutibus possessis, vid. Chart. 2a. 2.

m. 3. 4. 6. This office received some change about the 3. of E. 3. and in Chart. 2a. 2. m. 3. 3. comma there is the following precept.

Pro-marginem fequela, quant omnes de bulaux sus, qui habuerit quattuor responduntarmorum carmen ve relictis, licet milites non linte,

vequitas et arma competentibus illis bellam fumum, vis. unam cumcuporum pro et altero ad minus, et annum, qui habet

vigni liberae terrae, et armis, et equitata et armis pro fuga ad minus, faciant libri providentia; et illi, qui minus habent, offende-

saeque jacta libellum Wintunnum. Et in progress of time the fanares of Wintun fell into descre, and consigni allyed to carry none

}\n

tendus per la ley, quod al commen-
menti tieli tenentes fuerunt do-
nes per les feigniors a les tenants,
de tenir per tiels services a de-
fender leur feigniors, assen bien
come le roy, et mitter en quiet
leur feigniors et le roy de les
Scottes avandits.

Sect. 101.

And because such
	tenements came
first from the lords,
it is rea
don that they
should have the es-
cuage of their tenants.
And the lords in such
cafes may disre
treat the escuage
so afflicted, or
they in some cafes
may have the king's
writs directed to
the sheriffs of the
same counties, &c. to leve
such escuage for them,
as it appeareth by the
Regifter. But of such
tenants, as held of
the king by escuage,
which were not with
the king in Scotland,
the king himselfe shall
have the escuage.

LES FEIGNIORS AVER-
RON LEFSAGE, &.

This is evident.

BRIEFLE LE ROY.
This cometh of the Latin word
Breue. In his præcede to his
Next, he found of them, that they
be those foundations, where-
un the whole law doth de-
pend.


Et parce que tiels 

tenements de-
evront primes des
feigniors, il est rea-
fon que ils avertent
lefsage de leur te-
nants.

Es les fe-
nigers en tiel cafe pur
avertir differens par
lefsage afin d'effe-

det en aucun cas
par lefsage a mer
a

Crès de mème les

courtis, &c. de levier
tiels lefsage par eus

ficom appert pour le

Regifter. Mes de tietà


lefsage sort de

roy, queus ne s'ur

en le roy en Escorce,

Au roy meute aver

lefsage.

SICOM APPERT PER LE

Regifter. Regifer, est le name d'un ancien booke

et de great authorite en law, containing
all the tiels escrips of the commene law of which
booke be more in the præced to the seint part of my
Reports, et constitut apertlem et consta
tions, qui fi passion sui

prima antecedent placitum praemunire et constat

victis.

Allo it appeareth by the Regifter, that the king have

efcuage of his tenants, which hold

hims of as a manuser which he hath in ward

bilde, or by reason of a vocation of a bigiprice.

And to shal a common person, if he hath an effu for life or for years of a feignior.

Seci
twas a fine or fine of money payable as a commutation for pernasal service, yet antecently in money, haring
a.s certain proportion to the escuage allifed from time to time on tenants by knyghe service, and as that escuage called escuage,
was sometimes a service originally referred, and then escuage was desir'd the tenure and to decomposed to disfingish it from
the genuine and proper tenure by knyghe service. See Wright's Tit. 114, 115. But this distinction, it is alluded, is not
hatted at by Litterson, and it is even conjectured, that in his time it may be tell in the general uation of escuage, in which
only Mr. Naune meant to apply his minimandion on Litterson and Coke for considering it a tenue. See further 2. Black.
Comm. 4th ed. 25

(2) See note 74. b. note 3.

[Flour. 420, a. 2. Inf. 7.]
[Flour. 421, a. 2. Inf. 7.]

[Itterson lib. 60, cap. 416. Regifter, Ed. E. R. B. 84.]

[Itterson lib. 60, cap. 416. Regifter, Ed. E. R. B. 84.]

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[Itterson lib. 60, cap. 416. Regifter, Ed. E. R. B. 84.]

[Flour. 420, a. 2. Inf. 7.]
[Flour. 421, a. 2. Inf. 7.]

F. N. B. 84.
ITEM, in such case aforesaid, where the king maketh a voyage royall into Scotland, and the eIgnoreCase is asfeighed by parliament, if le figuIgnore d'infirme son tenant, that tient de loy for service dentier fee de chasvart, por eIgnoreCase iftant asfeigh, &c. and the tenant pleads, and wait avoer, that it fuit owe the roy en EIgnoreCase, &c. per x. jours, et le figuignore avoer le contravse, il fût dit, que il ferre trie per le certificat de marshall del hoflery (2) enescrit certe for toile que, ferrama is les justises.

Certificate in this case is a triall in law. I read of five kinds of certificates allowed for trials by the common law; the first where Littelson here speakesketh of, in time of warre out of the realme. 2. in time of peace out of the realm. [3] As it it allowed in army.

Dance of an outlawrie, that the defendant was in prison at Burdeux in the service of the master of Burdeux, it shall be tried by the certificate of the master of Burdeux. 3. Here the certificate of a Alderman by the mouth of the recorder. 4. By certificate of the seruite upon a writ to him directed [4] in cause of privillige, if one be a citizen or a forrener. 5. Tryall of records by certificate of the judges in whose custody they are by law. All these are temporary

32. In cause ecclesiasticall, as loyalty of marriage, generall forswear, excem-

menge, profession. These and the like are regularly to be tried by the certificate of the ordinary.

And there be divers other trials allowed by the common law, then by a jury of 12 men, which you may recite at large in the ninth booke of my Reports, vol. 59, 51, &c. in the case of the abbaye of Brezo Moresell, which are as plain as for the other there, as they can be here. And in this case, if the trial should not be by certificate, it should want triall, which should be inconvenient. One in this place I will add something of a certain triall which I found not in any of the treatises lately published against single contians; because it may det-

tine men from that unadvantage and unl必要的 kind of revenge, wherupon many murders have ensued, and prevent all hope of impunity for default of trial in that cause.


Hen. and woman, before the consistant and the marshall, whose fentence is upon testimony of insinuates or combate. And accordingly, where a falsefey of the king was slaine in Scot.

It is very clear, that eIgnoreCase was done for service out of the realme, which was the reason of its being called ferretria Sancæ et quæ infuso solito, but I do not find it precededly alimitsed by any writer, whether it was contined to expediens to countries, or into what it was contined to expediens to countries, when in deed the creation of the terror by peronel service, was expedly limited to certain countries. There could be no room for doubt ...

But the difficulty is to know, what the conditions of law was, where kings service was relevd generally. Littleton mention-

ions only Scotland, other writers and Wales; but in general both are named merely as instances. Lord Coke observes as much, and fars, that eIgnoreCase was also an expediens to countries; because it may det-

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Lib 2.  
Cap. 4.  
Of Knights service.  

Sect. 103.

land by others of the king's subjects, the wife of the dead had her appeals therefore before the court and the marshall. And so it was "[l]ocuted in the reign of queen Elizabeth in the case of Sir Francis Drake, who strook off the head of Despice in parvis transfiguratus, that his brother and heirs might have an appeal. He regna nonis constitutus connectionem Angelico, ec. idem deæmittat appellatum.

If a man be morally wounded in France, and dyeth thereof in England, it is said that an appeal doth lie upon the said flanne; for it is not pronounceable by the common law, and the proceeding in the same (as hath been said) is upon

CHAP. 4.  
Sect. 103.  

SERVICE de chivalry: Now, it appears by [a] the Regiules, that a servos omnes

Tenure per homagne fealty et

ecclesiæ et a tener per

service de chivalry, et

trait a ley gard

marriage and relief. For when such tenant dyed, and his heir male be

within the age of 21 years, the lord shall have the land helden of him until the age of the heir of 21 years; which is called full

age, because such

heir by intentment of the law is not able to do such service before his age of 21 years. And also if such heir be not married at the time of the death of his ancestor, then the lord shall have the wardship and marriage of him. But if such tenant dieth, his heir female being of the age of 14 years or more, then the lord

[2] Pol. in. Hone. 34.

Chivalry, or, knight, is a Saxan word, and by them written ecal. Chivalry taketh his name from the hore; because they al

together served in warrants on horseback. The Latines called them equites, the Spaniards cavalliers, the Frenchmen chevaliers, the Italians cavalieri, and the Germans reiter, all from the hore. It is necessary to be fonce by what name this service is.


[8] Co. 82.  

[10] Co. 79. b.  

Tenure per homagne fealty et
ecclesiæ et a tener per service de chivalry, et

trait a ley gard marriage and relief. For when such tenant dyed, and his heir male be within the age of 21 years, the lord shall have the land helden of him until the age of the heir of 21 years; which is called

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trait a ley gard marriage and relief. For when such tenant dyed, and his heir male be within the age of 21 years, the lord shall have the land helden of him until the age of the heir of 21 years; which is called full age, because such heir by intentment of the law is not able to do such service before his age of 21 years. And also if such heir be not married at the time of the death of his ancestor, then the lord shall have the wardship and marriage of him. But if such tenant dieth, his heir female being of the age of 14 years or more, then the lord

(1) The office of high constable became extinct in the reign of Henry the eighth by the attender of Stafford duke of Buckingham, in whom it was hereditary; and since his death there hath not been any permanent high constable, the practice having uniformly been to keep the office vacant on particular occasions. In consequence of it there hath frequently been a fulness of great controversy, whereby during the vacancy of the office of high constable the jurisdiction incident to the court of chivalry can be exercised by the earl marshal only. Lord Coke's manner of rating Sir Francis Drake's case imports, that an appeal could not be prosecuted against him for want of a high constable, and Dr. Duck, in his excellent treatise on the nature and authority of the civil law states, that the judges being consigned by Elizabeth were of this opinion. Duck lib. 2. cap. 4. pars. 3, 4.  

The earl of the first the lord keeper and judges of the King's bench were advised with on a like occasion, and held that the earl marshal could not take an appeal without a high constable; and accordingly the King appointed the earl of Lyndsey twice to the office, since two appeal by lord Res against Mr. Ramley for treason committed in Germany, and a second time appeal by the widow of William Willingham William Willingham for the murder of her husband in the island of Terra nova in America. See Rohne, vol. 3. p. 462. and Duke of York's case. Heerein only the right of the earl marshal in criminal jurisdiction was denied; but in 1640 the house of commons went further, for they resolved that the earl marshal could make no order without the constable. See Rohne, vol. 5. p. 226. However notwithstanding this declaration of the law by the house of commons, the court of king's bench soon after the refutation distinguished between the several branches of jurisdiction belonging to the court of chivalry, and held, that so in matters relative to new and done the court may be before the earl marshal only, but that to matters of ordinary justice touching life and land there must be a high constable as well as earl marshal. 1. Lev. 350. But in a subsequent case before the house of lords, the coun-
shall not have the
wardship of the land,
or of the body before
cause that a woman of
such age may have a
husband able to doe
kinights service. But
if such heire female
be within the age of
14 years, and unmar-
ried at the time of the
death of her ancestors,
the lord shall have the
wardship of the land
holden of him until the
age of such heire female
of 16 years. For it is
given by the
statute of W. 1. cap.
22, that by the space
of two years next en-
suing the fayd 14
years, the lord may
tender convenable ma-
riage without dispa-
ragement to such heire
female. And if the
lord within the fayd
two years do not ten-
der such marriage,
then the at the end of
the said 2 years may
enter, and put out her
lord. But if such heire
female be
married within the age of
14 years in the life of her
anclester, and her ance-
cestors thereby die, the
beings within the age of
14 years, the lord shall
have only the wardship
of the land until the
end of the 14 years of age
of such
domino capitale. And it is
called
jugates, as it appear-
et (7) by Littledon and
many
autonorms, par
(8) 3. cap. 21.
and the
dominomin regis, quia
sicut me darii
filiac.
Allo it is called (6) regale 
(9) Britton ed. 18.
(5) Britton ed. 18.
(3) Britton ed. 18.
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(99) Britton ed. 18.
(100) Britton ed. 18.
Of Knights Service. Sect. 103.

finis, ut ego et armis sic haec

in test on, &c.

(f) [Gillan lib. 7. ch. 9. 10. ibidem ch. 7. &c. 8. &c. 11. ch. 12. 15. &c. Bodin lib. 3. ch. 1. 2. &c. Brinton 16a. (l. 224.)

(f) [Gillan lib. 7. ch. 9. 10. ibidem ch. 7. &c. 8. &c. 11. ch. 12. 15. &c. Bodin lib. 3. ch. 1. 2. &c. Brinton 16a. (l. 224.)

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Of Knights Service. Sect. 193.

secutus frater ecclesiasticus et secundum fater in armis et in aequo et delect, et praebens, at quod fuerit promptus et parat ad narrationem suis interius nobilis exemplum et praesumptionem, cum fuerit queritur auctoritas, sequentia quid nobilis debuit de beneficio in remotissimis et posteros fuisse, Sic.

Out of the company of the learned reader will gather divers notable things. And if father after the lord hath the wardship of the land, the lord doth release to the infant his right in the feoffment, or the feoffment defendeth to the infant, he shall be got out of ward both for the body and for the land; for he was in ward as required he was not able to do those services which he ought to do to his lord, which now continuing, as if the infant were a free merchant be in execution, and his lands also, and the conduct relate to him all deeds, this shall discharge for the debt was the cause of the execution, and of the continuance of till the debt be satisfied, therefore the discharge of the debt which is in the case, discharges the execution which is the effect.

Et est lait gard, marriage, et relief. So as regularly there be five incide to knights service, (viti) two of honour and submission, as Hommage and Feudite. And from of profit, vis. Erection, where he hath treated before, Ward (i.e. wardship of the land) Marriage and Relief. of all which author hath spoken. But there be other incidents to knights service besides these: as [i] Aide pour faire foi chevalier, et aide pour faire marier, etc. which at the common law were uncertain, and were called ratificational uncertain, because if they were excepted and unanswerable in the judgment of the court where they were questioned, they ought not to be paide: but now as well in the king's case, as in the case of the subjected, they are by acts of parliament reduced to certainty, which are worthy your reading (1).

Aide, or Ward, in Latin usque, and hereof the lord is called gardien, usque, and hereof the lord is called gardien, usque, and hereof the lord is called gardien, usque. And alike (as our author faith) knight service with ward, etc. yet by custom the heire of him, that holdeth in focage, may be in marriage.

Marriage. Marriage being bestowed, not only the copulation of man and wife in marriage (in this place here) but the contract of a word in marriage, which the law gave to the lord, not for his benefic only, but that he should match him vertuously and in a good family without dispaircage, as shall be said hereafter, which is the foundation of his estate.

Relief. Relief is derived from the Latin word roborare; for [f] at ancient authors say, and give this reason, uni hereditatis, quod jacunt secus ad mentis capitis, refor ad manus hereditatis, et properti fullum reformationem faciantur et arc heredes quandam praemium, quod praedicia relief. And in Domestick it is called reformatione and recovery. The relief of a whole knight's fee is five pounds, and so according to that rate. And this relief was in fact hold certaine by the common law: but the relief of commons and barons were uncertain, and therefore called ratification uncertain; but the law of the 5th Carle, cap. 27, 38, 39, therein in certain, and mentioned as a knight's fee. But I read in the book of Domestici, that Charles the first erected to dominion particular se conperationem in privative persona, et opus horum cum ulla et alia cum fuido, quod ego et fastigio censes vestigia mentis. Since Littleton wrote (2) there is a good law made against fraudulent frettiments, gifts, grants, etc., contrary of fraud to hinder or defraud lords, etc., of their relics and heires amongst other things, for the explication of what fault which renders the authorities quondam in the margin. And it is to be observed, that the words of the fact act of 1555. dixit, are (by therefore declared, ordained, and casted) and therefore like cases, and innumerable mischiefs shall be taken within the remedy of this act by reason of this word (declared), whereby it appears the word was the last being the making of this statute (2).

Son hetre male. [f] For regularly by the common law the heire shall not be in ward, unlefe he chaine as heire by defeat. The statute of Merton, de his qui primogenitos frater, etc. did help fettlements by emballion in certain cases. And Bracton limits, that Robert de Waldrand a sarge of the law did advise the great lords of the realm to make the false statute, which when it was pull, the same act took his first effect in the heire of Waldrand's sone heire, wherefor Bracton makes a special rememberance. But now as much as in the statutes of 32. and 34. i. of. wull, he which holdeth lands by knights service may be set executed in his life time, or by his left will in writing, disposing two parts as by the said statutes appeareth. If he dispose all by act written, then it shall stand good against the heire,

et il est un autre maner de donner une horte houne per un velours, nomre il tout lui maner par priorite, etc. et l'autre maner par forfa

Sect. 195.

See W. 1. cap. 4. The found part of the constitutions.

1. See a note of the subject of relief, sect. 513.

2. See a note of the subject of relief, sect. 513.
Cap. 4. Of Knights Service. Sect. 103.

In a case of a defile by his lieut, a third part shall be tendered to the heire, though he be so freed the aroyn, if the tenant leave a third part to defend, then the defile is good for the residue. [2] But these things require so many diversifications grounded upon evident reasons, and are so plainly expressed in my Commentaries, as I shall not trouble you here. [3] (A) shall rule upon this point by knight's service drawn to it word marlye and relioues, is of great autylio, for it was in the time of king Alfrede. [4] 

Quantz tziel tenant mort. Here Littlenet speaketh not of a dying feild by the tenant, for in many cases the heire shall be in ward, albeit the tenant died not, for, not in the homage of the lord. As the tenant maketh a feoffment in fee upon condition, and the fooffor death, after his death the condition is broken, the heire wherein age entereth for the condition broken, he shall be in ward, and yeare fooffor had no statute right in the land at the time of his death, but only a condition, and which was broken after his deceas. [4] But because the condition refresheth the tenant to the land in nature of a defile, (for he shall be in by defile) by the same reason shall it refresh the lord to the wardship, being now (as Littlenet saith) the heire of his tenant is within age, and not able to doe his service, and no default in the lord to barre him of his wardship.

So [1] to doe take it, that if the heire within age recover a dem was fuerit in anguis, tullis, or fuerant ex defensor, or remanente as heire, or such like, the heire shall be in ward; for the heire stronger coyes then the former, for here a right dour defend to the demandant, which right being by course of law renounced to the possession of the heire within age, by consequent the heire is to have the wardship of him, but in the case of the condition, no right at all defended to the heire, as hath beene said.

If to tenant in taxes, the remainder in fee, make a feoffment in fee, and dyevs having the time in time within age, if the fooffor issue in the place in time, whereby he is remit, he shall be in ward to the lord; for as he is remit to the title of the land as heire, so is the lord refreshed to his title of wardship as lord of the fooffor. In this case herein I take no difference between right of action and a right of curtey defending, when by action the right of the land is lawfully recovered by the heire within age, to his tenant; and also by dyevs not in his hommage, yet there was a right of hommage, and no default or laches was in the lord, or not done by him to prejudice jusdicte thereof.

But if one ley a fine executorie (as for grant et rende) to a man and his. heire, and he to whom the land was granted and remisst, before the execution, the heire homageth in age entereth, he shall not be in ward, for his necellor was never tenant to the lord, and so is there a manifeste diversitie between this and the other cases. Et de executis.

But if the tenant makes a feoffment in fee of lands holden by knights service dyeth the heire within age entereth the heire, but not in ward, for his necellor was never tenant to the lord, and so is there a manifeste diversitie between this and the other cases. Et de executis.


(Psal 249 a.)

If the tenant dyeth and is within age, he shall have the wardship of the heire, but not in fee, but he shall have the lordship of the heire, but not in fee, but he shall have the lordship of the heire.

If the tenant dyeth and is within age, he shall have the wardship of the heire, but not in fee, but he shall have the lordship of the heire.

Tenantry by knights service maketh a pitt in fee, tenant in title maketh a feoffment in fee, and dyeth, his heire within age, the lord shall have the wardship of him; and if the fooffor, his heire within age, the lord shall have the wardship also of his heire, and of the land.

This causes, that in land Coley's opinion the feudal tenures were settled here before the conquest. But as to this controvertied point, see note a. 64. 4.
Lib. 2. Of Knights Service. Sect. 103.

If tenant by knight's service make a gift in tale, and the same make a sufficient in fee, and the donee die his heir within age, the donor shall have the wardship of him; because he is his tenant in right. [26] But if he die in his husband's age, the donor shall have the wardship of his heir, but the lord paramount; because he is tenant in fee, neither shall the donor avow upon the foederis or his heir for the services due unto him, because he must in his service. [27] If the services due to be avowed by him be sufficient in fee or in fee tail, then the avowee shall not be avowed as service incident to the reversion to sable out of him, but he shall avow upon the donor and his issues: [28] and thus are all the books that seem to be at variance, either unfounded or reconciled.

[26] La terre tenus de foed, &c. Littleton here speaks of lands held of a fidevit, for if a man hold land of the king by knights service in capite, and other lands of other lords, and die with his heir within age, the king shall have the wardship of all the lands by his prerogative: and this was due to the king by the common law, the fees of certain exempted, as in the instance of praerogativa regis cap. 1. appears.

But if a man holdeth lands of the king by knights service, as of an honor or manor, &c. [29] In that case the king shall only have the lands held of him, and not of any other. Yet by reason of tenures of the king by knights service of certain honours, (while they were made the king's lands) the king (as some have had) had (as it were by prescription) his prerogative, viz. Replegis age aut bonnay and Prowert, and of all lands held by knights service of the duchy of Lancaster in the county palatine (1).

[29] When an heir hath his lands in the ward by reason of a tenement in capite, after his full age he must sue for livery, which is half a year's profit of his lands held. But if he be of full age at the time of the death of his ancestor, then he shall pay for lands in purgation a whole year's profit for prime foedis: but if he be of a revocement upon an estate for life, as tenant in dower, tenant by the curteis, or tenant for life, then he shall pay but the moiety of one year's profit.

[30] If the heir be in ward by reason of a tenement of an honour or manor, (except as before) he shall not sue for livery, but under de mane caus et existim, albeit he never made tender. And if he be of full age, the king shall have no prime foedis, but reliefs. But where the tenum in capite, there the king shall have the meane profits until the tender be made; and if the tender be made, and not duly purged, the king shall also have all the meane profits.

[31] He that holdeth of the king by fiefage in chief, and dieth, his heir of full age, the king shall have all the lands held of, and not of the lands of others. [32] But if the heir of a fidevit in fiefage in chief be within the age of fourteen at the death of his ancestor, he shall not sue for livery, nor pay prime foedis, either then or any time after; and the reason thereof is, for that the cobbis of his body and lands that came belong to the prince's amy, as garran in fiefage. [33] Neither shall the king have prime foedis of lands held in Burgoigne, (as some have fald) for that it's no tenures in capite. [34] The Lawd. and the Swete. Note: there is a general livery and a special livery: a general livery hath two properties.

First, it is full of charge to the heir, for he must finde an office in every county where he hath land, or else he cannot foe a general livery, and he must sue out his writ of antium pro lusis, &c.

[1] The second property is, that it is full of danger: first, it concludes the heir for ever after to demy any tenure found in the office. Secondly, if livery be not sued for all of every parcel which the king ought to have, whether it be found in the office or not found (for a general livery could not be sued for by creadur) the livery is void, and the king may reavow the lands, and be avowee of the meane profits. So it is if the office be insufficient, or the procreation whereof the livery was made insufficient, or the like, the king shall relistic, as it breved.

[35] Therefore for the case of the heir, and for avowying of such danger, the heir for the most part fust out a special livery, which contained a beneficial portion, and swerved the fide charges, and prevented the fide conclusion, and the other dangers, which being of great and not of right, as the general livery is, the king may well and softly take more for a special livery, than for a general, for a cause aforesaid, but with ever such moderation to the heir may cheerfully get through therewith.

Not that livery is in nature of a reversion, which is to be taken favourably: for if livery be made of a manor by percutielis, the heir that thereby have the adowment appendant. Otherwise it is in grants by letters patent.

Since the time that Littleton wrote there is a court of wards and liverys erected by authority of parliament concerning the order of the king's wards, &c. to be held before the matter of the wards and the council of that court appointed by those act. This hath made

[30] Rot. Parl. 11. H. 6. n. 57. Simile pro ducatu Cornub. Rot. Parl. 18. H. 6. n. 42. Ryghtis. c. 111. and 5 El. 1. Rot. Parl. 18. H. 6. n. 57. Note. As to the ancient lower of power, the tenure of that is in capite, but nowe new alienation. But the lower of power is in capite as to the manor of Woodham Mortimer. Hall, MSS. By a tenure in capite in this note, lord Hale means a tenure of the king at de corona in controllacion the tenure of a tenant as de corona. In the time of lord Coke it was the tenure to denominate the former a tenure at de persona regis, and in the latter, it was not allowed to be a tenure in capite.

day, or tenure before A and B pay a fine, viz. twenty marks for every five. So suppose, that they were not fees imposed, but voluntary taxes. - 1st. MIL. In reading the proceeding annotation by lord Hale, it is very requisite to attend to the distinction between the two following points of the part of the annotation, which states that the power of issue changes in the office of蓝牙 between the 57, of H. 6. n. 5, and the 11. of H. 6. in referring to the commissions of a jury during the same period, is applicable to the general military service in all
made such a manifold alteration, as were too long here to be inferred, and doth belong to another tractable mentioned in the epistle of the jurisdiction of courts, where it were necessary, that the true jurisdiction of that court should be set down, a matter of no great difficulty, seeing it began so far by authority of parliament. And since Littleton's time, it has been a sufficient statute made concerning the finding of offices and other things, not only concerning the king's wards, or their rights and profits, but some other provisions very beneficial for the subject, in all to the number of 12. [3] First, that such persons as hold for tenure of years, or by copy of court roll, or have any rent common or profit apprehend not of any lands found in any office, whereby the king is intimated to the wealth of the lands or tenements, or to the forfeiture of the lands or tenements upon evasion of payment, felony, praemunire, or any other offence, yet may they have, hold, enjoy, and perceive their several estates, interests, and profits, although they be not found in the office. And this being a beneficial last the elements of such by statute or process and illegit, and executors, that hold lands for payment of debts, and their heirs, to the benefit of the commonwealth. 2. Where it is found, that the heirs in fee of younger years than in truth he is, he shall not be concluded hereby, but every such heir at his very tattage may make a writ of esse

p.a. 4. Of Knights Service. Sect. 105. 2. 4. Of every office, and so hold and be so remunered by the common law.

[2] 3. Where one person or more be found heir, where another person is heir, the prerogative is of course, that of one person or more be found heir in one county, and another person or persons found here in another county, there could be no interpolating.

Or, if any persons or unsolicited by office, or none found, the party privy to the said offices, and may be said in such case how the office shall be traversed upon this act.

[2] 6. Where it is in unlaid found by office, that any person assumed of treason, felony, praemunire, is seized of any lands, &c. the party privy, having just title of interest, shall have his or her or others's right without being driven by this double matter of record to his or her or others's right to the same prior to the other, on the petition thereon, shall have free and free of search, and every writ of search.

Where an office is found by these words or the like good of or quod ven et quod venentru praedicta cura, praemunire possum, or helden of the king for praemunire or praemunire count, it shall not be taken for any immediate tenure of the king in chief, but in such cases a pecunia praemunire should be made in both hands accepted or by which time.

[2] 7. The meaning of the land is, that the king immediately, where they are holden in a common person and not of the king immediately, and that the heir is within age, such heir within age shall have his or her right, &c. which he could not have by the common law.

[2] 8. The meaning of the lands are helden, which the king hath by his prerogative during the minority of the heir, shall receive and take such rents as are due unto him by the hands of such of the king's officers as receive the profit of the same lands, where before that act, the lands used to bear rents due, &c. during the king's personal, and after every fund charged the heir with all the arrears.

There is a provision for offices found before the forfeiture or before the 20 day of March next after the act.

11. A special clause is, that a seisin for shall be awarded upon every traverse by force of this act, and where the party was put to his petition, there upon the traverse there shall be two writs of seisin granted.

12. And lastly, if judgment shall be given against the king upon a traverse by virtue of this act, all former rights appearing of record are fixed to the king. But albeit these points are most necessary to be known, yet let us now return to Littleton.

Littleton warily and minutely (treating of a common person) faith, towns de bole of holding of him, for he shall have nothing in ward but that which is helden of him. But the king by his prerogatives

But Mr. Madison very fully animadverts on Lord Coke and his contemporaries, as well for calling any tenure of the king a tenure at des pervert by any of the jurisdiction, as for not allowing a tenure of de bannor to be tenure in capite. He observes, that all tenures of the king are of his prerogative, and not in order to didly any respect to the income originally helden immediately of the king, and helden immediately of him in consequence of the estate of an honor or barony, we should call the tenure of the reversion of the king at des pervert. That is not true, and that of the formen tenure at des pervert. Further he holds, that a tenure of the formen is not helden immediately of him without the interference of any other hand, and that a tenure of the king is helden immediately of him in consequence of the estate of an honor or barony, we should call the tenure of the king at des pervert. But in cases there certainly are very important differences between the two, such as are not perceived to be a difference. See Mason, Brown Ang., 169.

the king's subjects are liable to the internal defense of the realm. The remainder relates to the performance of that particular military service, which was the by reason of tenancy, and might be required on foreign expeditions. With respect to the army it may be sufficient to add, that military service by tenure was wholly abolished by the 11. Ch. 3. c. 34, where in expatriation terms didlaches all delays from service are begun to small, and that before this statute it had fallen into dilatoriness, as appears from there not being any influence of official service long reigns of Edward the third. As to the forces, lord took his belligerent advantages about
Of Knights Service. Sect. 103. 78.

peregrine shall not only have such lands and tenements, which (as hath been said) the heir of his tenant by servitude in capite holdeth of others, but such inheritances also as are not holden at all of any, as rents, charges, rents, fees, fayves, markets, warrens, hunting, and the like; and is to the law clearly holden at this day, as it hath been resolved; and if experience reacheth, that the king by his peregrine gives to him by the ancient common

law shall have those inheritances not holden, and so the peace made by [a] Stolinard is cheered

and made without question.

The law is changed since Lutetton wrote in many cases both for the marriage of the body, and for the wardeyn of the lands, and a fairer greater benefit goes to the lands than the common law gave them, and some advantage given to the heirs, which before they had not, which shall be reached briefly.

If the father had made an estate for life or a gift in tail of lands holden by knights ser

vice to his eldest son, or some other heir apparent within the age, the remainder in fee to any other, the

and dyed, the heir should not have been in ward; for this was out of the statute of Merle.

Bridge. But at this day the heir shall be in that case in ward for his body, and a third part

of his lands.

If the father had intestate his eldest son within age and a younger and the heirs

of the fons, and died, the fons should have been out of ward; but at this day he shall

be in ward for his body, and for a third part of his moiety. [c] So if the father had intestate

of his younger fons or others for the making of his wife a joiner, or for the advancement

of his daughters, or for the payment of his debts, and after intestate and convey the land to

his heir and dyed, his heir within age, his heir should not have been in ward; for he was

bound by the law of nature and nations to provide for them; but now in all these cases

the heir shall be in ward for his body, and a third part of the lands, and all this growth by

outstanding upon the estates of 32. and 33. H. 8. [f] But if either the eldest son, or any

of the younger sons purchase lands of his father, which are holden by knights service, be

for the reasonable value, this issue of the statute, nor shall the heir be in ward, nor any prime fons.

And in all the cases aboveforesaid, (for example) if a sonfession be made to the use of his wife

for life, or to the use of any of his younger fons for life, or to the use of some persons for

life for paynments of debts, and upon all these estates a remainder is limited over, against

estate for life in the life of the father, [c] if or it be conveyed to the use of the wife or

younger children in fee, or fee tail, or in fee for payment of debts, and these lands are conveyed

away in the life time of the father, after the death of the father no wardship, &c. accorded

by force of any of the said statutes, for each entail must continue till the title of wardship

die;/

If the father convey his lands held by knights service either of the king or of any

greater lord to his middle son in tail, the remainder to the youngest son in fee, and dyed,

celted being within age, and the king or lord left the body and two parts of the land, if

the middle brother dyed without issue, the king or the lord shall not have any benefit of the sta-
tute against him in remainder; for the statute was once satisfied, and the statute extended

not to him in remainder.

[If there be a grandfather, father, and divers fons, the grandfather in the life of

the father convey his lands held by knights service to any of the fons, this is out of the

statute; because it is not in the life of the grandfather, nor is it a case of right, nor a case of

right, or of entail. [a] If the father be dead, then the care of

them belongs to the grandfather, and then if the grandfather convey any of the lands to his

collateral blood, which is not his heir apparent is out of the said statute. And for any

conveyance by father or mother to or to the use of bastard children out of the

statute; because the father or mother do not in such cases give any title or right.

[f] But if the father hath the immediate care of his sons. But if the father be dead, then the care of

them belongs to the grandfather, and then if the grandfather convey any of the lands to his

collateral blood, which is not his heir apparent is out of the said statute. And for any

conveyance by father or mother to or to the use of bastard children out of the

statute; because the father or mother do not in such cases give any title or right.

[2. 3. 6. 2. 3. 5. 1. 2. 3. 5. 1. 2. 3. 5. 1. 2. 3. 5. 1. 2. 3. 5. 1. 2. 3.

[f] But if in that case he had by his will in writing devised his lands again to his

three sons, and all his goods, and devised lands to his eldest son, and after the eldest son

died, his eldest son was entitled to the title, and the eldest son had so much of the

lands as would make a full third part of all. The benefit, that groweth to the subject by

three sons of parliament, were, that tenants in fee simple might devise their lands by their

will in writing in such manner and forman, as is by the above statutes approved; also that

the father might devise his eldest son or other heirs himself or collateral of his lands held

by knights service, and two parts of the lands shall be out of ward. And in * Mighty's case you. [a] Co. 16. Mighty's case.

And both the statutes of 32. and 33. H. 8. concerning wardships and wardships are many

ways practical to the heirs, as taking one example for many. It is by knights service


[1] Grand alien re-sents the father and his heir in fee, and deth. The father being of full age shall have all the lands, and all the third part of any

money. Tit. 8. 1. Ley. 1. Crowley's case. But if such were to be a son to the daughter and her husband, they might have all the lands of the

wife, for both are children within the statute, ibid. 14. Ley. 1. Dodson's case is bold. 43. Grier's case. Hal. Mss.

[1] Lands are given in husbandry and wife and the heirs of the husband. Husband and wife join in use came to the use of the

husband

about the title of arms and commissions of array with the 18. of James, but the reader will find the same subject very accurately

presented in the present time, together with some particulars relative to the previous period not adverted to by lord Hale, in an

advised
service make a settlement in fee to the wife of his wife and her heirs, or to the wife of a younger son and his heirs, or wholly for the payment of his debts; in their coffms, although nothing at all of the lands be helden defended to the heire, but he is debarred of the same, yet his body shall be in ward. But this for a little sake may suffice. More hereof you may read in my Report in the several cases noted in the main.

**Plena age.** Full age regularly is one and twenty years.

_Entendement del ley._ Entendimiento i. intelligenza, the understanding or intelligence of the law. Regularly judges ought to adjudge according to the common intention of law.

By intention of law every parson or rector of a church is supposed to be relict on his benefice, unless the contrary be proved.

Of common intention one part of a manor shall not be of another nature then the rest.

A covenant made by the intended in a will shall not be declared to be made by testament. Le folle soud is hallo derecho.

**Mes fiel tenent devne feu hire female sojourn del age de 14 ans.**

And the reason as I said in antiquity, wherefore the law gave the marriage of the hire female if she were within the age of fourteen, and that she should not marry herself, was, per caritas, to have females de notre terre se marierens a nous ennemis, et destour de nous considerons leur bagonage prendre, jeus jeus fociant marier a leur volont. This is a special age for an hire female to be out of ward, if the said male is in the life time of her ancestor; for at that age she may have a husband able to do knights service. A woman hath seven years for several purposes appointed to her by law; as, seven years for the lord to have aid par fief marier; nine years to defere dower, twelve years to consent to marry, until fourteen years to be in ward, fourteen years to be out ward if the aforesaid threetherce in the life of her ancestor, fourteen years to tender her marriage if she were under the age of fourteen at the death of her ancestor, and one and twenty years to alienate her lands goods and chattels.

A man that by the law for several purposes happens age of 14 sans to take the oath of allegiance in the torne or less, fourteen years to consent to marry, fourteen years for the heir in fitage to choose his garden, and fourteen years is also accounted his age of discretion. Fifteen years for the lord to have aid of said forests elsewhere under one and twenty to be in ward to the lord by knights service, under fourteen to be in ward to gardian in fitage, fourteen to be out of ward of gardian in fitage, and one and twenty to be out of ward of gardian in chivalrie and to alien his lands goods and chattels.

_Mes fiel hire female sojourn deuns lage de 14 ans et nint marie._

Le feignoir avera la gard del terre. But put ene that the lord cannot have the wardship of the land, as if the lord before the age of fourteen granteeth over the wardship of the body, in this case the grantee of the body cannot enjoy the benefit of the two years, because he cannot hold over the land, and the lord which hath the wardship of the land only should lose the benefit of the two years, because he hath the lande only and cannot tender any marriage. Therefore in this case the hire female shall enter into her land at her age of 14 years. So it is a certain luthert of one lord by priority, and of another by posteriority and dieth, his heire female within the age of 14 years, the lord by posteriority shall have the lands but untill her age of 14 years, because the marriage belongeth not to him. Also if the lord marrieth the heire female within the two years, her husband and the said precedent enter into the lands: for, excellente causa, efficacie efficit, et efficacie ratione legit, efficit beneficii leges.
Lib. 2. Of Knights Service. Sect. 104.

If the lord tender a convenient marriage to the heire within the two years, and the marry 25. H. 6. 25. 13. H. 6. 6. Car. elsewhere within those two years, the lord shall not have the forfeiture of the marriage; for 71. 6. 6. 75. the lord Davin's case.

Est si le feignor deiit les dits 2 ans ne lay tender tiel mariage, &c.
done que el al fice del dits 2 ans pot entreter, et ouyfe le feignor. This is so evident, as it needeth no explication.

Mas si le feignor deuir neanmoins eftant de 2 ans, le feignor natura la garde forsue de la terre jusque alage de 14 ans, &c. Note, albeit the heire female be married at the age of twelve years in the life of her ancestor, (at which age the man may contract to marriage) to a man of full age, that is able to doe knights service, yet if the ancestor dieth before his age of fourteen, the gredian shall have the use of the age of fourteen, because (as hath beene said) that is the time appointed by the common law. And so if the heire male be married in the life of the ancestor at his age of fourteen years, and the ancestor dieth, the lord shall have the land until the ward commeth to the age of one and twenty.

Car ceo si hors del cofe del dit statut, instant que le feignor ne pot tender mariage a lay que este marie.

Natura non facit vacuam, nec hae superacunam. The law doth never enforce a man to doe a thing.

And where the said statute of W. 1. given unto the lord the said two years, thereby is implied, that he dyeth within the two years, his executors or administrators shall have the fame. For when the statute refeth an interest in the lord, the heir general is to have the same to his executors or administrators. Then put, that a lord hath the wardship of the body of the issue, and land of an heire female, and maketh his executor, and dyeth before her age of fourteen years, 25. 3. 25. 24. Att. 7. 7. years, whether the executor shall have the two years, because the executor is not lord. But I take it, the executor having the wardship of the body and lands, faild in that case have the two years, for that they were velied in the lord (1).

It is further provided by the said statute, that if the lord tender a convenient marriage to the heire female within the said two years, and the heire female velied, then the lord shall (Con. 16. 135.) hold the land until her age of one and twenty years, and further until he hath levied the value of the marriage, and content himselfe with the two years value.

Car devant le dit statut, &c. fiooce apport per le rehebail per et pat. 15. H. 6. 51. Can. 154. rol de le dit statut. Note, the rehebail or presmile of the statute is a good mean to fede out the meaning of the statute, and as it were a key to open the understanding thereof (2). 15. H. 6. 51. Can. 17. 6. Can. 179.
The tender of a marriage to an heire female before the age of fourteen, is void, which must be understood whether the lord may hold the land for the said two years, for the time of the marriage, or in the time of the marriage.

Note that the full age of male and female, according to common speech, is said the age of 21 years. And the age of discretion is called the age of 14 years; for at this age, the infant which is married within such age to a woman, must agree.

O F full age, which is the age of one and twenty, and of the age of (Aute 78. b.) discretion, which is the age of fourteen (3), somewhat hath beene spoken before (4). But now to the point of agreement or disagreement in this case. The time of agreement, or disagreement, when they marry after marriage made, is for the woman at 12 or after, and for the man at fourteen or after, and there need no new marriage, if they so agree; but disagree they cannot.

NOTA, quæ pleno die age de male et female folonque le commun parlant, est dit age de 21 ans. Et age de discretion est dit age de 14 ans; car a tiel le enfant que est femme de tiel age a un feme, qui ait averce.

Sect. 104.

(1) See 6. Ca. 74. 8.
(2) Lord Coke's manner of expressing himself on the operation of the presable in the construction of statutes is very observable. Instead of laying generally, that the presable shall construe the said clause, or of limiting precisely how far it shall have that effect, which would have been attempting to make a line where one cannot be drawn, he cautiously says, that it is a good mean to find out the intention. The authorities referred to in 4. New Abr. 465, will serve to explain by instances, what sort of inference the presable ought to have in expounding statutes. See also Hatt. on Stat. 32.
(3) It seems more proper to consider twelve as the age of discretion for women; for Lord Coke himself a few lines lower states that to be their time for agreeing or disagreeing to a marriage. See the note as to the age, at which infants may make a will of perfectness. Part 90.
(4) To Lord Coke's account of the several ages of a man and woman, which is given in fol. 78. b. add 1. Hal. Hist. Pl. C. 17. S 8.

not before the said ages, and then they may disfavour and man, may agree or dis-
marry against to others with-
out any divorce; and if they once after give content, they can never disfavour after (1). If a
man of the age of fourteen marry a woman of the age of ten, or her age of twelve he may
disfavour, as the law, though he were of the age of content; because, he was not married,
either both must be bound, or equal division of disfavour given to both, and so it is

If the woman be of the age of content, and the man under (3).

Sect. 105.

IT is a maxim in law, Quod dominus non mar-
ritat mulierem in ea sito non fœnet. And another
place, Si fœnet legitimi non fœnet; Sed fœnatum non re-
maneat in eisdem locis. Allbeit this marriage
is a fœnum, and not de jure, and although the disfavour be
as above, yet the lord shall never have the

of marriage.

And so if the lady marry

his ward to a woman, and after the marriage is di-

favour by reason of a precon-

tract (4), yet the godson shall

never have the marriage of the

ward again.

But if one ravisheth a

ward from the lord and mar-

rieth him within the age of

content, in that case if the

lord taketh again his ward, and he at the age of content

disfavour to the marriage, the

lord shall have the marriage of

him, for he never had it

before.

So likewise, if the ances-

tor marrieth his heir appear-

ant fœnus amnis nobilis, and
dieith his heir within age, the

word disfavour, the god-

son shall have the mar-

riage of him. The fame law it is in the same

case, if the wife dyeth before the age of content, the

lord shall have the marriage of the heir.

And so a divorce when the ward is marryed by the seconbr or by a ravisher, and

when by the godson himself. [1] For if the ancestor marry his heir apparant fœnus amnis

nobilis and dyeth, in this case, if the marriage be disfavour by disfavour in either of the

word or of his wife, the godson shall have the marriage of him. [2] And so it is if a ra-

visheth a ward fœnus amnis nobilis, and the marriage is disfavour, namely, the ward shall have the marriage. If the heir marre in word of the age of ten he marrie after

without the consent of the lord, he may marry unto the heir fœnus amnis nobilis a marriage, albeit be so marryed, and if he refuseth, and agree to the former marriage, the lord shall have the forfeiture of his marriage, as it hath been holden. But otherwise it is (3) (Guth Littleton)

where the godson himself marrieth the ward, ut fœnum. And the reason of the divorce is,

because in this case the godson had once the marriage of him, but so he had not he in either of the other cases, and it is a maxim in law, Quod dominus non marrit mulierem in ea sito non fœnet.

(1) But now the agreement after twelve or fourteen would not be binding on the infant, if the marriage was without fœnum or by licence and without consent of parent or guardians, and the infant was not a widow or widower for the 36 Geo. 3. c. 37 makes all such marriages void. In reading this statute, it should be attended to, that the clause for enacting the marriages of infants without the consent of parents or guardians is referred to marriages by licence, so that the marriage of an infant without such consent may be void, where licence are regularly publishet, which is done in the church of England, in which later part of the法案 makes the licence void. As to marriages without either licences or banns, which are wholly termed clandestine, they are utterly unallowed by the statute. Note that Scotland is excepted out of the 46 Geo. 3. c. 37, in consequence of this, so much of the as, as was calculated to defeat the marriages of infants without the consent of parents or guardians, have been frequently evaded by going

It appears upon consideration of all the books aforesaid, that where the ancestor marrieth his heir apparent within the age of consent, and dyeth, the infant still being within the age of consent, the lord may take the infant (if he will) into his possession, in respect the infant may disagree to the marriage; and if the infant be denied by him, he shall recover him in a writ of riponment of ward, and thereupon have the infant delivered to him. [40] But if [7] 22. 6. 12. adjudged in the books at large.

Sect. 106.

EN mense le manner eff, le gardien luz marie, et la femme de l'enfant leis dege de xiii ans ou xxii.

IN the same manner it is, if the gardian marry him, and the wife die, the infant being within the age of 14 years or 21.

Sect. 107.

ET que tiel enfant pott disager etri mariage, quant il viat al ge of xiii ans, il cte proverbe par le paroles del statute de Mer- ton cap. 6. que isn't dit.

AND that such infant may disagree to such marriage, when he comes to the age of 14 years, it is proved by the words of the statute of Merton cap. 6. which faith thus.

De dominis, qui maritaverint illos, quos habent in cufodia sua, villanis, vel alis, ficit burgubenis ubi disparaguntur, si talis hieres fuerit infra 14 annos, et talis statix quod matrimonio confinenter non posset, tunc fi parentis ille conquerantur, dominus emittat cufdiam illam uique ad statatem hereditatis, et omne commodum, quod inde receptum fuerit, convertatur ad commodum hereditis infra statatem existentis, secundum dispositionem parentum, proper deducos ei positum. Si autem fuerit 14 ans et ultra, quod confinenter posset et talis matrimonio confinenter, nulla sequarum peram.

Et isn't eff proverbe per mene le statute, que nul disparsament eff, mes leu eul, que, est en garde, eul mari be deis dege de xiii ans.

And so it is proved by the same statute, that there is no disagreement, but where he, which is in ward, is married within the age of 14 years.

T HIS Littleton addeh, because he froke in the case next before of a disagree- ment by the infant. Here he faith, that if the wife dy, the infant being within the age of consent.

L'eflate de Mer- ton. So called be- cause the parliament was hold- den at Merton.

Et que tiel enfant pott disager, &c. il est proverbe. &c. Now the time of disagreeement is in fact Merton ca. 6.

dowre by act of parliament, and so observed by Littleton, who seeks no other precedent therein then by the law of England.

Unt disparaguntur.

Disparaguntur, committunt in the verb dis- parare, and that of dispar, and age.

Now it is necessary to be understood, what disagree- ments there be for the which the heire may relite.

And of such disagree- ments there be four kinds.

The first proper anim, as an ides, et consens mens, a lunaticum, sect. (1).

The second proper innocens, as a villein.

Burghils. 3. The femme or Radox lib. 2. fol. 92. £cullen daughter of a person unamint- ed of treason or felony, albeit pardoned, the blood is incorpored. 4. A buffard.

The daughter of Merton ca. 2. Ser. 15. Rec. Parl. 18. 19. 20. 21. The daughter of

Need married to the forme of

Thos. (a Wallace after his m-

5. An alien or the childe of an alien. Regraphy is a man of

trade, as an hebbernace, a draper.

(1) The 15. G. c. 50. annuls the marriages of all persons, who after being found lunatics on inquisition by commission under the great seal, or after being committed to the care of justices by act of parliament, shall marry without the chan- cellor's declaring them of sane mind. Before this act there could be no action as to the validity of the marriages of lunatics, where it could be clearly proved, that they were married in their legal intervals. Our should think, that there could be no little room to do their incapacity of controlling marriage whilst in an actual state of insanity, if our books were not remarkably silent on the subject, and it was not alluded to, this by our law as an ideal circumstance, from whom the general incapacity of making contracts appears to form an strong an objection as occurs in the case of a madman, may contend to marriage. This doctrine, as to ides, however strange it may appear, is mentioned as a point adjudged in one case, and recurs continu- ed by allowing dower to the wife of an ides, and by guiding the estate of a man's husband to curably marry, unless on account of an officer finding the wife's idocy and the defect of land to her after the marriage it is apprehended, that there be concours of title between the king and the husband. See 1. Ro. Abt. 357. and note fol. 70. b. and note a. Thus by the Roman law, persons considered mad, lunatics excepted during the intervals of sanity, and ides were all equally incapable of marriage. See Beverine. de jur. connexin. lib. 2. cap. 4.

go into Scotland to be married there and returning into England immediately afterwards. Indeed the validity of such

...or the like, (and this agreeeth with the civil law, Patricii cum plebis matrimonio a conditurum, whereof Gualtieri speaketh thus, Si eueri fuerit filius burgisii, evetenem habeat ute intelligiant, quando defretet fuit dormitum numerare, et casus quibus et aliis parentes negativa familia coactiva.

The third, Prope vitam corporis, as in de membris, having but one hand, one foot, one eye, &c. Secondly, deformity, as to boke a fisgant, a creple, half, lame, deprec, crooked, &c. Thirdly, privation, as blind, deaf, dumb, &c. Fourthly, disse, horrible, dispole, public, disgrace, or such like disfayet. Fifty, forty, and continually inimict, as a consummation and such like. Sixtly, impotency to have children in respect of age, or pass childer, or to tender yeares as there is too great disfayet, or for natural disable of impediment or such like. Sevently, defrauded of her virginity.

The fourth kinde of disparemar was justifer partus privilegio, &c. as to marry the heire to a widow, whereby he should by reason of the bigamy have lost the benefit of his clearage, whereby he might have his life; but now the exception of bigamy, as that case is sealed by the statute (1). And Littleton saith, [2] that there be many other disparements which are not specified in the said statute, for those two mentioned are put but for examples. In a word, it must be conjugatae marriageum aliquo diverso.

Si talis homo fuerit infra 14. annos, et talis edat quis matrimonio conferire non potest, &c. Note albeit the word, where he is disparemar, may disfayet at his age of fourteen yeares, yet the law doth absolve the odious dealing of the gardian, to whom the custody of the heire is committed, and his horrible profession of honoured marriage, the only ligament of mens inheritance, as is inferred a great punishment upon the land in this case, albeit the marriage be not perfect, but unavoidable by disparemar.

Tunc si parentes illi conquerantur. Littleton in the next section expoundeth these words in this manner, viz. Si parentes conquerantur, i.e. Si parentes inter tamen testamentam, que si tantum a divorcio, que si be etsi de tali infant non congé de faire etsi de faire testamentum a constabat per has fait has fors, &c. Hereof see more of this in the next section.

Domini amittit cursum illicitum ilam usque ad attem et unum commodium quod inde receptum fuerit conversatur ad commendum hereditis, &c. Here followeth the penitent.

First, amittit cursum, that is, the whole benefit of the wardship. But in this case if the gardian hath granted the wardship of the land to another bona fide, and after, the heire is disparemar, the grantee shall not forfeit his interest, for the statute is (domini amittit cursum).

Secondly, Et unus commodium, quod inde receptum fuerit, conversatur ad commendum hereditatis in commum dispositionem parentis. The words are expounded by Littleton which needeth no further explanation. Now where readers upon this statute have put a case, that if the tenant hath ilike a daughter, his wife, &c. with a femme and disparemar the daughter before the age of twelve yeares, the feme is borne, the daughter disparemar, the feme dies, the daughter within the age of fourteen, the land shall be in ward againe. This case is not warranted by this statute, for this disparemar extends not to the heires female.

If the tenant make a lease to A, for life, the remainder to B in fee, the tenant for life for renders upon condition, B. dies his heire within age, the lord disparemar the heire, tenant for life concern for the condition broken and dies, the heire shall be out of ward, for that he claimeth as heir to one man. But if after the disparemar lands descended from another ancestor to the ward do disparemar, he shall be in ward for those lands.

Si autem fuerit 14. annorum et ultra, &c. nulla sequatur pana. By which it appeareth (as Littleton observeth) that there is no disparemar, but where the ward is married within the age of fourteen.

Sect. 108.

L'Estaut de mag- NOTA que il fo- e sion, cement eux these words shall be
na charte.

Though it be in forme of a

(1) The word bigamy is frequently used to describe the crime of marrying a second wife during the life of the first, but the proper name for this offence in our law is polygamy, and with us a bigamy is a man who either marries a widow or after the death of his first wife.
Of Knights Service. Sect. 108.

parole ferront entendes, Si parentes consequantur, etc. Et il semble a a fons, qui confiderant jeftatute de Magna Charta, que vont, quod heredes marientur abique disparatione, etc. sur quel cet flactute de Merton fur tel point est fonde(e), que nan action peut estre pris fur cet flactute (2), entant que il ne fuit unques view ne oye, que a fons action fuit pour fur cet flactute de Merton pour tel disparagement envers le gardeine par cet mater avantads (3) etc. et fi a fons action paifait estre prije fur tel mater, il serra enntendue au chaque (4) estre mise en ure. Et nota (5) que ceux paroles ferront entenades (6). Si parentes consequantur, id est, fi parentes inter rox lamenteurer, que (7) est taunt au dre, que les cousins de tel enfant ont cause de faire lamentoation ou complaint enter eux, pur le hont fait a leur cousin en dispa raged, quel ena tema, donques puit le prochain cous, de que

underfoot, (Si parentes consequantur.) And it seemeth to some, who considering the statute of Magna Charta, which willeth, that heredes marientur abique disparatione, etc. upon which this statute of Merton upon this point is founded, that no action can be brought upon this statute, inasmuch as it was never seen or heard, that any action was brought upon the statute of Merton for this disparagement against the guardian for the matter aforesaid, etc. and if any action might have been brought for this matter, it shall be intended that at some time it would have been put into use. And note that these words shall be understood thus, Si parentes consequantur, id est, si parentes inter nos lamentoentur, que is as much as to say, as if the cousins of such infant have cause to make lamentation or complaint amongst themselves, for the shame done to their cousin so disparaged, which in manner is a shame to them, then may the next cousin to whom the

death of his first wife married a second time, in consequence of which he formerly could not claim the benefit of clergy. This denial of the benefit of clergy to bigamists was in consequence of some ancient papal constitutions and enum of councils against ad

painting bigamists into holy orders: a prohibition, which however was ministered by the injurious policy of the church of Rome in encouraging the marriage of the clergy, and led the way to the complete establishment of that principle. See L. 15. 16. 1 Tim. iv. 3. etc. See the Index under this word. It appears, that this constitution was immediately received in England, for the statute of 4. E. i. de bigamia takes notice of it, and explains how it should be construed, by directing that it should be confedered to understand bigamia before, as well as those who become in effet. See 4. E. i. c. 5. bull. 375. 3. Hall. Pli. C. 375. 3. Hawbl. Plin. C. 375. 3. etc. etc. and Harri ngton, on Ant. stat. ed. 73. When the benefit of clergy, by being allowed to all who could read, was extended to bigamists as well as persons in orders, the reason for excluding bigamists in general was exactly the same as that before mentioned, but notwithstanding this, the exclusion of bigamy continued till it was taken away by the statute of Edw. the 6th. It was done, as it seems, very fortunately, but at the same time inconsiderately; for we find in the quarto edition of the statutes, the editor of which, in a note on the 4. E. i. c. 10. refers to this

charter, yet being granted by assent and authority of parliament Littleton here faith it is a statute.

This parliamentAggregate charter hath thus appeas, I beleive, in law. Here it is called Magna Charta, not for the length or number of it, but it is not in respect of the charters granted of private things to private persons now adasted being disbarred (7) charters but it is called the great charter in respect of the great weightiness and weighte greatnesse of the matter contained in it in few words, being the foundation of all the fundamental laws of the realm; and therefore it may truly be said of it, that it is magna in parvo. It is in our books called Charsis Charsis de libertatibus, Magna Charta, Etc. And ye may the laws of England be called libertatis, quae libere docet, Magna juris que generaleque regni rox decreta.

This statute of Magna Charta is but a confirmation of the common law in that statute called caperrocess chartorum anno 25. E. 3. it appears by the annals of 42. E. 3. c. 1. that King John had granted the like charters of remission of the ancient mater.

This statute of Magna Charta hath been confirmed from time to time, and commended to be put in execution. By the statute of 42. E. 1. c. 1. 42. E. 3. c. 1. it is made even against all points of the charters of Magna Charta, or Chartis de Fe

of the fourth edition of this document, the editor of which, in a note on the 4. E. i. c. 3. refers to the
Lib. 2.  
Cap. 4.  
Of Knights Service.  
Sect. 108.

hereditage ne puit 

dijderfer, enter et ou 
er la garde en 
chivalrie. Et si ne 
voulie, un auter cousin 
de l'enfant puet ce 
faire, et les offres et 
profits prendre al ufe 
del enfant, et de ce 
rander accompt al en 
fant, quant il vient a 
sen plein age. Ou au 
auterment leuant de 
age puet enter luy 
mesme, et oufer le 
gardein, &c. Sed que 
re de hoc.

Vide Petitiones coron dominæ 
regis in Parlamentis, tit. 5. 18. 
E. 3.
excusavit nigri judicis, post natali 
nullum hæcrum requirit. E. 3; 
50. 11. 12. 4. 7. int. 38.

Vide Lecuuch de Mariagio, 
cap. 17. In cialibus jactuum.

Hic igitur appareat 
hoodice, si fez est, a 
be guidido by judi 
cicial preesident, the 
rule being 
good, Periodium exùmin, 
sed hancurum vicecam non commoderat exemplo. 
And as usage is a good interpreter of laws, 
when usages there be in no example is a general 
intended, that sometime it should have bene put in uræ (1). 
Not that an act of Parliament by 
non ufer can be unfez or lose his force, but that it 
can be expounded or declared how the 
act is to be understood.

Si parentes conquerantur. Of this sufficient hath been said before.

Si les cousins. Here Littleton expoundeth parents to be his cousins, under which name of cousins Littleton includeth uncles and other cousins, who when the father is dead are 
in the same.

Ount caue a faire lamentation, &c. Note if they have cause to make lamenta 
tion, it sufficeth though they never complain.

Pu le lust fait a tour cousin. For when their cousin is dispersed in his mar 
jage, it is not only a shame and infamy to the heire, but in him to all his blood and kindred.

Donques por le proche cousin, a que le endurance ne puet dijderer, 
enter et oufer le gardein en 
chivalrie. This is worthy the observation, for the words of the statute are general, Secundam dij 
finionem percorruit, and the construction thereof shall be according to the resaux of the common law, for the 
next cousin, to whom the inheritance cannot defend, shall enter and oufe the 
gardein, and shall be in place of a gardein, as it is in case of a gardein in loco.

Et si ne voulo, un auter cousin del enfant puet ce faire. Still pursing 
the reason of the common law in case of guardian in loco.

Et les offres et profits prendre al ufe del enfant, &c. This is so evident as 
it needeth no explication.

Ouantement leuant deus age puet enter luy 
mesme et oufe le gardein. If none of the cousins aforesaid will enter, then the heire himself may enter. In all which 
the reason of the common law is pursued. But what if the heire be dispersed, and the next of kin doth enter, and when the heire commeth to 14 yeeres of age in the marriage. Yet shal 
not give any advantage to the lord, for that he had lost the worship before.

(1) See 9. Hen. 3. c. 6.
(2) In the famous case of Abbey and White, in which the question was whether an action on the case would lie against a re 


turning officer for refusing a vote at the election of a member of parliament, one objection made to the action was, that it was of 

the full impresum, and the words of Littleton, in explaining why an action could not be maintained on the statute of Nec 

as against a guardian for disbarrement, were much relied upon by judge Powis in an authority directly in point. But lord 

judge Powell concurred with Holt, though they differed on the principal question. See 5. L. Raym. 946, 948, & 957. It 

further, that in the case put by him the question was merely, whether the proper remedy was by affidavit or by querie. However, it 
must be confessed, that the novelty of the case, and the circumstances of the parties, may frequently be fairly urged as a strong prejudice against its ma 

ly being more important, where the rights, which is the foundation of the action, is admitted, and the mode of relief is the only 

thing controverted, was as the case in Abbey and White.

digression the reader will find a very informing dissertation on the lex boii, and the principles, by which the application of it 
ought to be regulated, exprest clearly and illustrated by a variety of cases, more particularly such as relate to tattuins, mar 
determined in B. R. Titn. 11. C. p. 67. to 75. It is there attempted to prove by the opinion of the court, as well as by authori 

ies, that the lex boii is not applicable in the instance of slavery, and that though a negro is brought from a country, in which 

the negro is a slave, yet he cannot be considered as a free person, to all intents and purposes, unless he can prove a certain 

birth in a country where slavery is not permitted.—(2) See sec. Swinn. on Scots law. But though the rule, which where some 

parties
ITEM mults autres divers disparagaments y sont, que ne font specifiques en meme leflature. Come fi le heire, que est en garde, est mary a un, que nad forse un pes, ou forse un maine, ou que est deforme, decepire, ou ayant horrible difafe, ou grand et continual infirmitie; et (si fait heire male), fi fait marry a femme, que est passe l'age desfanter. Et mults autres causes de disparagaments sont; sed de enlis queere, car il est bon matter dapprender.

And there be many and divers other disparagaments, which are not specified in the same statute. As if the heire which is in ward be married to one which hath but one foot, or but one hand, or which is deformed, decepire, or having some horrible difafe, or great and continual infirmitie. And (if he be an heire male) if he be married to a woman past the age of child-bearing. And there be other causes of disparagement; but inquire of them, for it is a good matter to understand.

ET des heires males, qui sont deis age de 21 ans apres le mort pour ancie nient marries, en tels cas le feigneur avero le mariage de tiel heire, et avero temps et place de tender a lay convenue able mariage sans disparagement deis mene le temps de 21 ans. Et a cfai ovoir, que heire en tiel cafe poie effier, fi voit effier marrie ou non; mas fi le feigneur, que est apel gardien en chi valry a tiel heire, tendre convenable mariage deis age de 21 ans sans disparagement, et heire ceo rofere, et en foy marrie deis le dit age.

AND of heires males, which be within the age of 21 yeares after the decease of their ancestor and not married, in this case the lord shall have the marriage of such heire, and he shall have time and place to tender to him convenable marriage without disparagement within the said time of 21 yeares. And it is to be understood, that the heire in this case may chuse whether he will be married or not; but if the lord which is called guardian in chivalry tenders to such heire convenable marriage within the age of 21 yeares without dispa-

DE tender a lay convenue able marriage, &c.

But it is in the election V. Co. 30. Lo. Durie's case of the lord, whether for the finge value the lord will tender a marriage or no, for he shall have the finge value without any tender (1). And this thare needth no other explication. The value of the marriage of such an heire is according to the valuation by lawfull trial, or as much as another had before offered to give for the same without fraud and covyn.

Le heire en tiel cafe poie effier si voit effier marrie, ou non, &c. And fo on the other side, though there be a tender made of a convenable marriage without disparagement, yet the heire may refuse, for in civile marriage there

(1) This point, which before lord Coke's time appar it to have been doubtful, was adjujed in the case of Palmer and Wilder, and again in lord Durie's case. See the former case in 5 Co. 196. b. and the latter in 6 Co. 30. b.

parties is under the age of discretion makes the contract of marriage equally voidable by both, is admitted with respect to actual marriages, yet the civilians and canonists are not agreed, but that he holds as to contracts of marriage per urbam de futuro as to the younger party unless it is ratified at the age of discretion, so in the mean time it shall not have a greater effect on the older, and consequently unless the contract is ratified by last when the younger party attains the age of discretion, it will not avoid the subsequent marriage of either. Swinburne adopts this last opinion. See Swinb. on Spens. 16. But this doctrine
Lib. 2. Cap. 4. Of Knights Service. Sect. III.

there must be a free consent. "

Si tief heire. That is, if such an heire to whom a tender hath been made by the lord, and by whom a refusal hath been made. If such an heire afterwards marrieth another within age, he shall forfeit the double value; but if he before any tender marrieth himselfe within age, he shall pay but the single value of the marriage.

Neither the single value, nor the double value shall be recovered against the heire, but after his full age; but for both these the lord hath a double remedy, viz. an action is a foresaid, or the lord may retain the land after full age for his forfeiture of both, with this difference, that in the case of the single value the taking of the profits shall not be accounted purcell of the value, but as a gage or pledge till the heire do forfeit him of the single value; but in case of the double value, the perception of the profits shall be taken in full faith. Failing of the double value, for the statute of Merton, which gives you the forfeiture, faults, dooms, and cases. The Statute of Merton, cap. 7, 55, 56. 6 tit. lond. 72. 6 Co. 72. Lord Danes's case.

donques le gardine a verra le value del mariage del tief heire male. Messi tief heire leu meme marie dems lige de 21 ans encon tre la solent le gard inen en chibrie, don ques le gardin evera le double value del mar riage per force de le statute de Merton a vant dit, come en meme le statute a compris plus a plen. force of the statute of Merton aforesaid, as in the fame statute is more fully at large com prised.

of the statute of Merton, of an heire female, as appeared by the said act; neither at the common law could the lord have holden the land of the heire female after fourteen years for the value.

Sect. III.

PER caflle gar. wordum cafiri, seu caflre-gardem, seu caflri-gardem. He that holdeth by caflle-gard, holdeth by knights service, but not by eicuage, for eicuage is due when the king maketh a voyage royal out of this realm (as hath beene said) and the tenant maketh default, but caflle-gard is to be done within the realm, and without any voynte royal. Also a certaine terme is appointed for the service of the tenant that holdeth by eicuage, but no certaine terme by law for him that holdeth by caflle-gard. Vide in the title of Grand Sec juic. Sect. Horrof come.

ALSO divers tennants hold of their lords by knights service, and yet they hold not by eicuage, neither shall they pay eicuage; as they which hold of their lords by caflle-ward, that is to say, to ward a tower of the caflle of their lord, or a doore or some other place of the caflle, upon reasonablie, warning when, their lords heare that the enemies will come, ors.

dividual of reciprocity where one of the parties is an infant or under the age of discretion, however true it may be in its application to actual marriage or to contracts of marriage per oemsta de praesenti, must not be considered as extending to other contracts with an infant, not even contracts of marriage per oemsta de praesenti, for in them the partum of full age may, it is said, be bound at all events by our law, and yet as to the infant the contract may be voidable. Accordingly in the case of Holw Ward the court held, that if a man of full age enters into a contract of marriage with a woman of 15 per oemsta de praesenti, and afterwards marrieth another woman, an action on the case lies against him for breach of his promise. See 2. Stew. 150. 2. 537. & 5 C. in Fitz-Gibbs. 175. 175. 2. Barnd. 324. 324. 325. 5. Barnd. 123. 123. 376. As to the effect of the 16 of G. 2. c. 37, on proconsul, the statute of marriage, see note. 23. 32. 33. 2. In L. and the words quae de hoc axe adiit.—(4) it is true, this precedent is now no longer a cause for dissolving a marriage in England; for it appears implicitly taken away by 16. G. 2. 53, which enacts, that there shall be no suit in the ecclesiastical court for compelling the celebration of marriage by reason of any contract, whether per oemsta de praesenti or per oemsta de praesenti, entered into after the 5th of March 1744. It is observable, that the statute mentions contracts of marriage by future as well as those by present words, but notwithstanding this it is for being clear, that marriage could not be contracted in the ecclesiastical court on a contract of the former kind otherwise than by admisses, and probably it was included in the statute merely from caution. See 2. Stew. 150.
or are come in England. And in many other cafes a man may hold by knights service, and yet he holdeth not by eucuage, nor shall pay eucuage, as shall be paid in the tenure by grand ferjeanite. But in all cafes where a man holds by knights service, this service draweth to the lord ward and marriage.

A garter un

tower del castle, &c.

A tower, or a doore, or a bridge, or a fonce, or some other certain part of the castle, for the tenure shall be his service.

Del feignor. For

it cannot be of a castle of another:

Lord and tenant by castle-guard, the lord granteth over his feignor to another, (5. Rn. Ab. 513.)

(5a) the castle-guard is gone (5.) Temp. I. 3. tit. 60. 596.

because the grantor hath not 51. E. 1. tit. All. 446.

the castle. (5b) For the same (5b) 17. E. 3. 54. 72. E. 3. 43.

in it, that if even each of me, as of my manor

of D, be feit and fuit of the tenure remaineth by knights service, and it goeth in benefit of the tenant, as to the guarding of the castle, until it be redelit. But ward and marriage belongeth to the lord in the meanis time. For Littleton in the end of this fiction puteth it for a generall rule in all cafes where a man holdeth by knights service, it draweth ward and marriage.

If the tenant make default in guarding of the castle, the lord may displace for it, and recover satisfaction in damages.

For reasonable garnisement. This warn are must be given by the lord or some other for him, and the tenant need not to stirre until he have such warning.

Enemie. Which is to be understood of any manner of enemies whatsoever. And though Littleton speakes of enemies, yet it seemeth that to keep a castle is time of intrification and rebellion (albeit in properie of speech rebels are no enemies) is a tenure by knights service. Vide Hill. 8. E. 1. 1. Mid. Rott. 86.

Voyent vener. For preparation is to be made warning upon the enemy be come indeed into England. This apperiteth to be in time of hostilitie and warre, and for preparation therefore. But a tenure to keep a castle in time of peace only is no knight service.

If the tenant by castle-guard doe serve the king in his warre, he shall be discharged against the lord, according to the quantity of the time that he was in the king’s balf.

Flata speacheth of an old word calleth servitore, and (faith be) Significant quietae militiae. Flata 23. 2. 5. 42.

servitor, in cape, quae non invenit quia dominus ad custodiam cæsaro.

Sect. 112.

And if a tenant, which holdeth of his lord by the service of a whole knight’s fee, dieth, his heir then being of full age f. of 21 years, then

Reliefs, releuement. Vide Seld. 103.

This word is deriving of the originall before (5.)


not have an action of debt (4), 16. Anti. 45. b.

(1) See ante 56. a. Lord Coke there cites a passage from Domesday book, in which reliques are mentioned; and from this early use of the word, and from the terms of a law of Edward the Confessor and of two laws of Canute, some have inferred, that reliques were known to the Saxons. This circumstance is much relied on by those, who think that feudal tenures were established in England before the Conquest; and therefore Sir Henry Spelman, who supports the contrary opinion, is very full in his observations on this part of the subject. The form of what he advances is, that Domesday book at the utmost only proves the use of reliques after the Conquest, which is not denied; but the imposition of Edward the Confessor is either not genuine or belongs to William Rufus; that he was, which is the word used in the original language of the laws of Canute, is improperly traduced religion; and finally, that however it might fail with the policy of the Normans to affimilate reliques to societe, there were the most essential differences between the two. According to Sir Henry Spelman, the heriot was paid out of the goods of the deceased possessor of the land; the relief by the heir, out of his own purse; the heralds at all events, the relief only in case of lacking the lands in succession. These two of the differences taken by Spelman are particularly noticed here, because they ap-
Cap. 4.

Of Knights Service. Sect. 112.
dangue le seigneur avoue C. s. pur re-лиse, et del hierc celby, que tient per le moisy de lont de cesla-nder, l. s. et de celby, que tient per le quart part de fec de cesla-nder, 2 s. et sic que plus, plus, et que moins, moins.

For the king's esclavage, and for the earls' fee consilium of a baron, the third part of the fee was the fourth part of his barony.

For an earl's barony, which included twenty knights fees amounting to four hundred pounds paid per annum, and he pays for his relief for an entire earl's barony the fourth part of his income, and that is an hundred pounds. All which appeareth by the statute of Magna Charta cap. 7, made in the ninth yeare of Henry the third, at which time there was neither duke, mar-queus nor viscount in England, as before is said. But there be preloures in the exchequer, that a dukedoms consisting of two earldoms, viz. eight hundred pounds paid by the yere, payeth two hundred pounds, and a marquises consisting of two baronies, viz. eight hundred markes paid per annum, and of an earldom and a barle, payeth two hundred markes for his relief. Where the viscount should pay in certein I have not heared. Before the making of the statute of Magna Charta the king had nost sabution of noblesmen, and it was not reduced to any certaintie (4), yet ought it to have been reasonable and not exceutive.

I have hence the record of a charter made in ro. H. 6. to Eustace Beaufichamp earle of Warwick, whereby he was created king of the Isle of Wight, to him and the heires males of his body. His relishe was inearnt, and not limited by the statute of Magna Charta.

For the king's esclavage, that the wards of the statue of Magna Charta be herecvoir consilium de cœ-¡nisens integra et baroni baronis de baronia integra, &c. Now what an entire earldom and an entire barony is, hath beene declared before.

For the king's esclavage, and before the statue of Magna Charta all earldomes and baronies were derived from the crown, and were holde of the king in capite, and the king would not futher them to be divided, or severed. And such entire earldomes, and entire baronies are within baronies, but at this day earles and barons are without such earldom and baronies of the king in chiere.

For the creation of an earle, he hath sometimes an annuitie granted unto him (5), and sometimes nothing: so as such earles and barons so created are ecleerly out of the statue of Magna Charta, and are to pay such rehefe as other men that hold the king in capite. For as the heire of a knight shall not pay rehefe, unless he hath a knight's fee, &c. so neither the earls nor barons shall pay any rehefe by this statute, unless he hath an earldom, &c. or barony, &c.

Sen heire de pleine age s. de 21 d. &c. And yet in some case the heire shall pay rehefe when he was within the age of the time of his ancestor. As if a man holde land of the king by knights service in capite, and of a common person other lands by knights service, and dieth, his heire being within age, the king hath all in ward by his proui-son until the full age of the heire. In this case the heire shall pay rehefe to the king in capite, for that the heire had the wardship of bodie and land. And the lord upon execors deuidt ought to have either wardship or rehefe.

But if there be lord and tenant by knights service, and the tenant dieth, his heire being within age, the lord wayse his wardship as he may, and taketh himfide to his seigniorie, in this case the lord shall not have rehefe at his full age, because he might have had the wardship of the bodie and lands.

This annuity is therefore called arrecher money, and the grant of it usually expressed, that it was affered in order to en-able the grante to attain his newly-acquired dignity. Mr. Machel gives us various instances of such annuities and sheweth, that they were not confinnd to earls for one of the letters patent in his book is a grant of 1d. a year by Hen. 6. out of the crown-revenues in Sotham to Thomas Percy on creating him baron of Egremont. Mr. Machel, Antho-ny. 148. In Dyer s. notice is taken of an annuity of this kind, and it is there held to be annexed to the dignity as not to be alienable. See further as to creation-money, Clavil. Brit. ed. 1773. p. 215.

This annuity is therefore called arrecher money, and the grant of it usually expressed, that it was affered in order to en-able the grante to attain his newly-acquired dignity. Mr. Machel gives us various instances of such annuities and sheweth, that they were not confinnd to earls for one of the letters patent in his book is a grant of 1d. a year by Hen. 6. out of the crown-revenues in Sotham to Thomas Percy on creating him baron of Egremont. Mr. Machel, Antho-

pli to seels and rehefes as they are now distinguihable. See the 1 Test. on Fonths in Spen. Pottfurn, 31. It is observab-ble, that Bradon marks the dissident between seels and heriott very strongly, and in terms partly correlative with the idea of Spelunca for after treating at large on seels Bradon adds, de quidem als propratius, qua nominatur heriottum, ea quod nullum com-
Lib. 2. Of Knights Service. Sect. 113, 114.

Sen heire. [1] And yet the succesor of a bishop or abbot may pay reliefe by preprivi-

or grant. or oat.

If the reuse inoffineth his heire apparent by collusion, and dieth, [7] his heire of full [i] 30 b. c. 2. Rel. 4.

age, it is a question in our books, whether he shall have reliefe either by the common law, p. 9. c. 4. B. 2. 3. 4. 5.

or by the statute of Mistlebridge ca. 4. But now the statute [a7] of 13. Eivis. ca. 5. hath cleared

that question, and that the lord shall have reliefe where the conveyance is made to any person

by collusion, see. See.

Sect. 113.

This is evident, and needeth no explanation.

ITEM home poit tener son terre

de son feignoir par le servise de
deux feus de chivotier; et dunque

heire, estoit de pleine age al

temps de mort son ascensires, paier-
a son feignoir x. l. pur reliefe.

ALSO a man may hold his land of his lord by the service of two knights fees, and then the heire,

being of full age at the time of the death of his ancestor, shall pay to his lord x. pound for reliefe (4).

Sect. 114.

N O T A. Axi sit aild pier et

fits, et la mere morfut

voivant le pier de le

fits, et puis lateit, que

tient la terre by servise
de chiotier, mo-

ruffet feiet, et ja terre
diffendit al fits la

mere comme heire al

feign est deis age, en

ces cas le feignor

avero le garde de la

terre, mes nemo le

garde del corps del

heire, par ce que nul

serra en garde de son

cors a esau feignoir

voivant son pier, par

ce que le pier durant

son vie avero le mar-

riage del son heire

apparan, et nemo le

feignoir. Autement

off, ou le pier di mort

voivant la mere, le

terre teuus en chi-

otte.

F I G. Y et le first Pois. lib. 4. cap. 5. 18. E. 3.

other shall have die Delphini, b. 32. c. 1. Cas. rei.

marriage of his daughter E. 3. 1. Temp. 57. T. N. B.

if so be his heire apparent,

and Lieven's necos ex-

cursos to the daughter, for

that (faith be) the father shall

have the wardship of his heire

apparent, within which wards

the daughter is included, so

long as the continuance heire

apparent.

Le feignoir auroit
garder del terre.

Note that albeit in this case the law
doth give the custody of the

body to the father, and borrough

the lord thereof, yet the lord

shall have the wardship of

the land by force of the tenure

at the first creation thereof. And

so it is if the father must eat

his heire within age and dieth,

yet the lord shall have the

wardship of the land.

Fruit don pier.

This doth not extend to any

collaterall heire, but only to

the sire or daughter being

heire apparent; for albeit a

man shall have an action of

trespass Quae consequiuntur

cum hereditatibus, and al-

beit the words he Cuyo mar-

E. 3. 2. E. 3. 327. 36. 32. 4. fir. 27, 37.

cause the well behoving of

his

(1) See further as to reliefs. Toll 93. 2. at the end of the note there, 50 b. 35. 3. and b. 92. 93. 3. 106. 3. Wright's Ten. 93.

and Viz. Alder. Tevers. E. 2. 10. 3. 2.

(2) De in the epige a the king, the father shall have the custody of the body and the marriage. 9. Jul. Cas. Ward. E. 2. 3. 4. Univ. cefes.

Hill. MESS. See Loy 1.

Sentia juxta, vel de feudis secularibus. sextum discretum levatur cancellationem, sive quodam praefite singulit sit de gravissim iubem de poena, et

Quae consequiuntur cum hereditatibus. See Bract. lib. 4. cap. 36. lib. 5. 3. See further as to liberties, Toll 2. 10. 3. See n. 1. Let us

note that the statute was made in the reign of King John, ca. 1193. The statute was not merely nominal for lord Coke in another place affirms it as a

reason, why a relief is not within the limitation of 20 years prescribed by the 32. H. E. c. 3. in the case of ancestry or remainder for

for as fenors. v. infra. 93. 3. Note that in the book left cited forty years are mentioned as the limitation in the 32. H. E. but Mr. Nuffield

in his edition of the statutes 1919, that in the rest of the time is fifty years.—(5) But it is add, that if the relief is claimed,

where the land holden in chivalric descends to the son on the part of the father, &c.

Vide Plut. lib. 1. cap. 4. Sec. W. 2. c. 35. (c. Ro. Ab. 39.)

a. 2. Ro. Ab. 39.)

(1) It was first introduced in Red.

not by reason of tenure, but by custom, there must be a prescription for the def sede to warrant it. See W. Ja. 133.—(4) Acc.
ante 47. 4b. But there are some opinions to the contrary. See c. 1. Lom. 171. 2. Ro. Rep. 371.
NOTE, there is gardian in right in chivalrie, and gardian in deede in chivalrie. Gardian in right in chivalrie is, where the lord by reasone of his feignyrie is feited of the wardhippe of the lands, and of the heyre, ut supra. Gardian in deede in chivalrie is, where in such case the lord after his feignyrie, by deed or without deede, the wardhip of the lands, or of the heire, or of both, to another, by force of which grant the grantee is in poiffession. Then is the grantee called gardian in fait, or gardian in deed.

If an aduowson be holden by kynge's service, and the tenant dieth, his heire being within age, the lord cannot grant the wardhip of the aduowson without deed; because it is derived out of an inheritance that lyth in grant, and passeth not by liverty; for jas propositio annihilat incorpora, and so (albeit there be diversity of opinion in our bookes) is the law taken at this day. (1)

(1) By the 12. Ch. 1. s. 64. tenure by kynge's service, whether of the king or of a common pergon, together with all its opposte privities and consequencies, as also those of feigne in capite, is wholly taken away; and every such tenure is converted into free and common feigne. The same statute ments, that all tenures, which should afterwards be everted by the king, should be in free and common feigne only. Nothing can be more full in expressioun, than this act for before generallly abolishing tenure by kynge's service, and the consequencies peculiar to that tenure and feigne in capite, it defenda into particularies with a ceduancy of words, which can only be accounted for by the extreme anxiety to expresse completely the evils the legislatore had under contemplation, for which purpose it might be deemed needfull to attack them in every shape. We have already observed in some former notes, that homage euerage and the ohes fort fit minor and por faire fit chander are expressly mentioned. It remains to add, that the statutes, after taking away the count of wards and liveries, enumerates wardhippe, liveries, primer feigns or outerslims, values and fortureis of marriages, and fines feineis and gardens for alienation, and fowes away the whole. But the all prefers rents certain, heriots, lates of court, and other services incident to common feigne, and fealy; and also fines for alienation due by the customs of particular minors, unless such fines are for lands in capite. Reliefs for lands, of which the tenure is converted into common feigne, are notlasses in some influence; for the clause, which prefers rents certain, provides that such relief shall be paid in requis de feign rentes, as it is paid on the death of a tenant in common feigne. From this clause it folows, that there can be no relief out of lands which the statute changed into feigne, unless where a quit rent is also payable; and the reason of this expressioun the act will appear by considering, that a year's rent is the relief for lands hidden by common feigne, and consequenfly is never due out of lands, which are not fulfied to a rent. See toll fol. 165. 166.

It was intended to have continued the notes of fol. 64. 2. in this place; but the annotator finds it convenient to postpone them to the end of the chapter of Villenage.
TENURE in Socage. Agriculture or Tillage is of great accruage (as byr, as being very profitable for the common wealth, wherein the goodness of the habit is best known by the privation for by laying of lands used in tillage to pasture, false maine inconveniences do daily erose. First idleness, which is the gound and beginning of all mischief. 2. Popuulation, and decay of townes; for where in some townes and parishes were occupied, and lived by their lawful labors, by converting of tillage into pasture, there have beene maintaine but two or three hearthens; and where men have bene accounted sheeps of God's pasture, now become shep men of their pastures. 3. Husbandry, which is one of the greatest commodities of the realm, is decayed. 4. Churches are destroyed, and the service of God neglected by diminution of church living; (as by decay of yrthes, &c.) 5. Injury and wrong is done to patron and God's ministres.

6. The defence of the land against forraine enemies is enfeebled and impaired, the bodies of hufudsmen being more strong and able, and patient of cold, heat, and hunger, than of any other.

The two consequences that follow of these inconveniences, are first the displeasure of Almighty God, and secondly the subversion of the policy and good government of the realm; and all this appeareth in our books. And the common law (as) gives erite land (which actually is called hyde and gaine) the prehemony and prececdency before meadsweres, parishes, woods, mynees, and all other grounds whatsoever; and servior carneo the beas of the plough have in some cases more privilege than other cultell have, and amongst the Romanes agriculure or tillage was of high estimation, now that the peasants themselfes would put their hand to the plough, and it is fluid, that never prospered tillage better, than when the peasants themselves plowed (such force hath the example of farriers) whereof three famous Romans in their several kinds speake.

O fortunates nimium, sed si bona mentum. Agriculter, quisque in prael divisiidibus avarus Finuit homine facade nilionis salgina testinum. Nulla laborem vegere mansit, qui ab urbe ad arma transmititur. &c. fortior autem miles non confregit eamque, sed in hunc et milites in proun pabule definit. But now let us peruse our authors words.

Secv'or

Socagium.  Littinum in hoc capítulo feíchitur hoc wordum auctóri, Socagium ductum ab uuló Socagium feíchitur auctóri, Socagium ductum ab uuló

And Bennoth esercitabat uellem de manibus suis, et ad auctóri, Socagium ductum ab uuló

And Bennoth esercitabat uellem de manibus suis, et ad auctóri, Socagium ductum ab uuló

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And Bennoth esercitabat uellem de manibus suis, et ad auctóri, Socagium ductum ab uuló
Lib. 2.

Cap. 4.

Of Socage.

Sect. 119.

proofs to the contrary, nor hath a
any connivance to the contrary, as shall be hereafter laid in
his proper place. And of necessity this change, here-
where spoken of, must be before time of
memory; for within in time of memory, the services of the
plough cannot be changed to money by consent of the

Cap. Burges. fol. 120.

tenant and the desire of the lords, s. into an annual rent, nei-
ther by release or confirmation or other conveyance, fo-

Cap. Confirmation. fol. 539.

long as the feigni-
ory remained, as shall be laid in his due place.

Devost be
ner oue lour
fokes: The plough
is named properce-
collection; but the
field, and the fyth,
for the reaping in
harvest and such like,
as are enclosed.

S. 4. 2. 1.

For as carnare
terra, a ploughland,
may contain
miles,
miles, foutes, me-
dow, wood, &c. as
remaining to the
plough; so under
the service of the
plough, all ser-
vice of tillage or
husbandry are in-
cluded.

Uncore le

nofine de socage

demurt: Altho'
the cause where
upon the name
of socage first grew
taken away, yet the
name remains
the same it hath borne, and is
used to distinguish this tenure from a tenure by knights service. Now
is this: because socage
idem et quod servitium
foe, and soca idem et
quod carucu., s. a foke
or a caruc. But in an-
tient times, in the li-
mitation of time and
memory, great part of
the tenants, that tyndren-
de leur seigniors pour fo-
charge, devost be
ner oue lour
fokes, chefoun de les
dits tenant per certain jours par an par arer et
famer les demesnes le seign-
ior. Et par ce que telle
ouverage feurent fait par
le voin et frilennence de
leur seigniors, ils fu-
rent quins enors leur
 seigniors de touts ma-
ners de services, &c. Et
par ce que telle servies
feurent faits oue lour
fokes, tel terme fait ap-
pel tenure en socage. Et
puis apres tels services
feurent changes en de-

4. E. 3. 161. 6. 6. 3. 1.79.

niers, par concours des
tenants et par dere

4. 2. 2.

des seigniors, s. en un
annual rent, &c. Mes
uncore le nofine de fo-
cage demurt, et en divers
lieux les tenants un-
core sont tels services
oue lour fokes a leur
seigniors; iust que touts
manneres de tenures, que
ne foun pas tenures per
service de chivrier, foun
appels tenures en socage.

Land in dispute by Sir Henry Spelman, who investigates the subject very minutely. See Spelm. Polyb. p. 59. In a former

note we had occasion to hint at Sir John Dalyngrigge's opinion on the same subject and on the nature of the difference between

back land and socage. See ante & 2. note 6. Since the writing of that note a draft, intituled If it be soe on the back land and

back land of the Commons, hath been printed, the pretended object of which is to examine and confute the opinions advanced by Sir

John Dalyngrigge. This draft, being at present only distributed amongst the author's friends, is difficult to be procured, and is

mentioned here for the sake of such readers as may be curious to explore this dark and controverted subject. See further

Lib. 2. Of Socage. Sect. 120, 121.

Also if a man holdeth of his lord by escoage certaine, f. in this manner, when the escoage runneth and is affisted by parliament to a greater or leffer sum, that the tenant shal pay by his lord but halfe a marke for escoage, and no more nor leffe, to how great a sum, or to how little the escoage runneth, &c. such tenure is tenure in socage, and not knights service. But where the summe, which the tenant shall pay for escoage is uncertaine, f. where it may be that the summe, that the tenant shall pay for escoage to his lord, may be at one time more and at another time leffe, according as it is affisted, &c. such tenure is tenure by knights service.

Also if a man holdeth his land to pay a certaine rent to his lord for castell-gard, this tenure is tenure in socage (1). But

(1) According to Fitzherbert such a tenure was knights service. This he infers from the form of a write of livyry fied out by an heir on estranging his full age, where he held of the king as of an hour in the king's tawns by the service of rendering the rent of ten fillings a year towards guiding the colfe of Dover; and Fitzherbert endeavours to account for the tenure being knights service, by suggesting that the service might always have been guarding the cattle, and that in modern times the king might take a rent in lieu of colfe-guard, which taking of a rent, says Fitzherbert, would not alter the nature of the tenure. Fitzherbert, Nat. No. 245. However this opinion of the reverend judge is not delivered abolutly, but is accompanied with a pause; and indeed it seems very liable to exceptions. For-1. The form of the writ relied upon appears quite consistent with fidejuss in capite; fiding of livyry by the heir at full age having been incident to that tenure as well as to knight's service in the case to which it is applied, may be disputed. For,2. The propriety of the writ, in the case to which it is applied, may be disputed. For,3. The propriety of the writ, in the case to which it is applied, may be disputed.
Lib. 2. Cap. 5. Of Socage.

Sect. 122, 123.

Met lou le tenant doit per
lay mene on per un autur
faire caste-garde, tid
tenure est tenure per ser-
vice de chivaler.

where the tenant ought
by himselfe or by another
to doe castle-gard, such
tenure is tenure by knights
service.

Sect. 122.

IT is called rent
service, because it
is accompanied with
some corporal service,
as feasting at the table;
in respect wherof the
lord may disfraine
for lost common right.
See more of this matter
in the chapter of Rent.

ITEM en toutscapes
i lou le tenant sient
del signior a pater a
the afit cernote rent,
et rent est appelle rent
service.

ITEM en tiels te-
nures en socage. If a
man be solde of a rent
charge, rent focks,
common of pasture,
and such like inheri-
tances, which do
d not lie in tenure,
and yet, his heir
within age of 14
years; in this
case, the heir may
chose his gardein;
but if he be of such
tender yeares as he
can make no choice,
then (if the father
hath made no dis-
pulsion of the cus-
tody of the child) it
were most fit, that
the next of kin, to
whom the inheri-
tance cannot de-
scend, should have
the custody of him (2).
And whensover tak-
eth the rent, &c. the
heire shall charge
him in an account.
But if he hold any
land in socage, in
that case the

(1) Here the word heir is significant, for it seems to impart, that guardianship in socage can be of heir only. However though it was always clear, that guardians in Widget it was sure to be a defiant, yet some have doubted whether wardship in socage might not be where the infant was in the posse. This point was agitated to late as the 35th and 36th of Charles the Se-
cond, when the court held, that guardianship in socage was equally confined to a tenant with guardianship in chivalry. 2.

(2) See p. 31. 4.

by Mr. Medox ut de cavens, whereas the writ in Plishburne expresseth the tenure to have been de tenare. See ante 73. 2. 3.

Plishburne's reason for considering the tenure as knights-service seems unsustained by the terms of the writ. He implies
the service referred to be castle garde, but the term to be merely taken by the king as a commutation in money, but the writ
capably
Lib. 2. Of Socage. Sect. 125. 88

And when the heyre cometh to the age of 14 years complete, he may enter and outhal the gardian in socage, and occupy the land himselfe, if he will. And such gardian in socage shall not take any issue or profits of such lands or tenements to his own use, but only to the use and profit of the heire; and of this he shall render an account to the heire, when it pleaseth the heire after he had accomplishedeth the age of 14 years. But such gardian upon his account shall have allowance of all his reasonabile costs and expences in all things, &c. And if such gardian marry the heire within the age of 14 years, he shall account to the heire, or his executors, of the value of the marriage, although that he took nothing for the value of the marriage; for it shall be accounted his own, that he would marry him within taking the value of the marriage, unless that he married him to such a marriage, that is as much worth in value as the marriage of the heire.

(1) This is according to the rule in "equus juris nature of conditionem potissimum." Plowd. 295. In Caxton's translation of Spithe's service. See also Harte. Abridgment of Law of Co. Litt.
Lib. 2.

Cap. 5.

Of Scagie.

Section 123.

of kinase of either side, to first happen the body of the heire, shall have him (1), but the next of blood of the part of the father shall enter into the lands of the part of the mother, and the next of kinase of the part of the mother, shall enter into the lands of the part of the father (2).

(2) If A be a man of goods in foggage, in the first instance of nullity of age, ther shall be a great demand in foggage per cuius de Curiis (3). But an infant within age, that is (4) not in the custody of another, cannot be in foggage; because no writ of account lyeth against an infant. And herewith agreeeth Beauf. (5) and yeeldeth this reason, alioquin regere no juris, qui feititio rogato non est. And Flatts Smith, (6) that in all minorum cynthiares non debet; alii enim praeminent male regem, qui feititio regere negoti. And by like reason on idone, a man one comotus unus, a lunaticke, a man carnalis et mutus, et jusde et mutus, or a leper removed by a writ de leprosy amovendo, cannot be in foggage. But in the case of a god per cuius de Curiis, ther lyeth an action of account against A in the case aforesaid.

(1) A que le heritage se port defenser (2) Nullos hereditatis seu praepositi vel unum non percipiat per (4) custodiae commissiones. Note (1) (2) (4) word (per) may or may not. And therefore this doth not easily exclude an immediate demand, but all possibility of demand.

As if a man hath issue two sons by several venters, and having lands holeh in foggage of the nature of burgh English dyeth, the younger brother within age of 14 years, the elder brother of the said blood shall not have the custody of the land (3); because by possibility the elder may inherit the land, for if the yongest dye without issue, and the land descend to an uncle, the elder brother of the said blood may be heir unto him; and herewith doth agree Beauf. (4) that in all minorum cynthiares non debet; alii enim praeminent male regem, qui feititio regere negoti.

(5) Hane hic argument locutus est: juvenis minorum cynthiares non debet; alii enim praeminent male regem, qui feititio regere negoti. But this law of England ethit, et aliquo agrum laeque committunt ad deservendum (6).

Dounies la mere. Note, albeit land cannot differ to the mother from her foute, (as hath beene faile) because inherittance can attend, yet here it appeareth by Litonerton, that the is next of blood (7), for none (as hath beene said) can be in foggage in foggage, but the next of blood; and the like is to be foid of the father, as hereafter next appeareth.

Dounies le pier. By this it appeareth, that the parent of a tenant in a tenure of foggage shall be in foggage, and shall not have the custody of his eldest founne, in respect of his paternal natural custody, (as he shall have in case of a tenancy by knights service, as before appeareth) (8) but as guardian in foggage. And the reason of the diversity is, for this in the case of a tenure in foggage, the father muell by law be accountable to the fousne both for his marriage, and also for the profits of his lands, which he should not be if he had the custody of his eldest founne in this case as his father in respect of nature (9), and the act of law doeth not any man wrong.

But no lord or other person, in respect of any tenant by knights service or otherwise, shall have the custody of any child that is heir apparent to his father, but the father only during his life, as both beene fald before (10).

It is to be observed, that in the Index of England, there are three manner of guardianships, ex officio, by the common law, by statute law, and by custum. By the common law there are foure manner of guardians, ex officio guardians, by existing in chivalry (where Litonerton hath declared before Sect. 103, 86.) (11) guardian by nature, as that held of the elder son, of whom Litonerton hath spoken Sect. 114, (12) guardian in foggage treated of in Linton in this Section, and guardian per curiam de mortuis; (13) all frequent in (4) our books. By statute, note the statute in 4 & 5 26.

(8) This law of England ethit, et aliquo agrum laeque committunt ad deservendum (6).

(1) See ante 12. a. note 1. (2) No Serjeant Hawkins supposeth an elder brother to purchase land and the land to descend to his youngest brother being under 14, in which case the infant's paternal and maternal relations are equally of the blood of the first purchaser, and therefore equally capable of inheriting to them, and that Serjeant says, who shall be guardian in foggage. Hawk. Adv. of Co. Lit. Perhaps there may be some difficulty in solving this question. If Littetton's rule be under flood; floodcly is, cannot be any guardian in foggage in such a case unless the next friend a father or mother or other lawful ancestor, or of the half blood, for all of the other relations may by possibility succeed as immediate heirs to the fousne.

(3) But if the next of blood on either side may be guardian, the other's blood must be preferred, because the contrast is from the succession. (4) Guardian per curiam de mortuis, in which case it is not taken notice of by them. See Soc. 1. 12. Hawk. Adv. 40. adv. 148. 150. adv. 149. 140. adv. 149. 140. Hawk. Adv. 40. adv. 148. 150. adv. 149.
Lib. 2. Of Sconeage.

Sect. 1234. 89

Alas if the mother were gendar in sconeage, and taketh husband, and dyeth, the husband shall * by will, or by testament, have the dower in the right of the [see 39th].

A guardian in sconeage shall not [a] prefer a benefice in the right of the heire [b] because he [c] [d] not have any benefice therein, for the law doth ab- hance the children and benefices therefor; and therefore in that case the said guardian shall not by will or testament prefer them to the heir's heir [e] for heire [f]. And Britton speaking of these gendar said well, Les gendarjean fait volentier que ses gendarmes sont leurs gendarmes. 1

Prenons place que ses gendarmes sont leurs gendarmes. 1

Si rendra ad, &c. opere quos ade loco spolit. de 14 an. 1

This is an extract from a legal document, discussing the rights and duties of guardians in sconeage. The text is written in Latin, with some terms translated into English. The document is discussing the rights of a guardian in sconeage and the responsibilities they have towards the children. It mentions the term "sconeage" and how it pertains to the law of inheritance and guardianship.

Prenons place que ses gendarmes sont leurs gendarmes. 1

Guardian ad litem, in the law of England and other common law jurisdictions, is a person appointed by the court to represent an inability to act on one's own behalf, often due to incapacity or inability to understand the proceedings. This is a legal term that was commonly used in medieval and early modern legal texts.

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Lib. 2. Cap. 5. Of Scogge.

(Sect. 124.)

qunctumt not B what is in the cloth, and the cloth together with the goods of B are stolen away, B shall not be charged therewith, because A did not try B with them as this case is (1). And thus, which would have been found before, is to be understood as shipwreck by fire, by lightning, and other like inevitable accidents (2). And all these causes were refused, and adjudged in the King's Bench. * An and by these diversities are all the bookes now in the point recessed (3).

Note, render it is necessary for any, that receiveth goods to be kept, to receive them in this special manner, viz. to keep it in his own, or to keep them at the peril of the owner (4). But now it is Littorina to be further hasted.

Efi tiel gardin maria is heire deins 14. ans, &c. For if he marry the
heire after 14, he is out of his custody, and no account shall be made therefore.

If aconterra a lay. He shall account for the marriage of the heire, vts, for so much as any man knows false of the marriage, or would give in marriage unto.

On a les executors. Not (2) that an infant of the age of 14 may make his will as some hereupon have collected; but the meaning of Littorina is, that it after his marriage may accomplish his age of 18 years, at what time he may make his testament (5), and constitute executors for his goods and chattels, and the words are so to be understood, as may stand the face and context. Note, executors could not have an action of account at the common law, in respect of the privyty of the accounts; but the statute of W. 2. c. 21, hath given the action of account to executors, the statute of 21. c. 5. to executors of executors, and the statute of 31. c. 1. to administrators.

Quo ille volat marier ions premder le valer. So as the gardin shall not accrue only for that which he shall receive in this cafe, but for that which he might receive.

Si non qu il le marry a tel mariage que fait tant en valer, &c. This needeth no explanation.

If the heire in the custodie be rife out of the custody of the gardin, and the rvivder niorish the heire, the gardin shall have a writ of ravishment, and recover the value of the marriage, &c. and shall account to the heire for the same.

And the gardin in the custodie is bounden by law, that the heire be well brought up, and that his evidences be safely kept.

The grandmother of the same heire and heire of John Bermulli, who beild the manor of To
tougton in the county of Middlesex, and was in the heire in a writ of word against Simon Chevin, which had married the disponer of the heire; and by the rule of the court, the plaintile pro atriis hereditatis pro cunctis euidentiarum porto invenatur in lacubis.

This sect is an appendix to the next.

Efi si ofuen auter home, que nef pas pro
cchein amy, occupie les terres ou tenements de
heiere come gardeine en
foigge, it ferma com-
pell le render accruct
al heire, aux bien fi-
come il juftruit prochien amy; car il ne pas
ple par lui en breie
daccompt adir, que il
nef prochien amy, &c.
mes il refpondra le quel

AND if any other man, who is not the next friend, occupies the lands or tenements of the heire as gardin in foigge, he shall be compelled to yield an account to the heire, as well if he had beene next friend; for it is no plea for him in the writ of account to say, that he is not the next friend, &c. but he shall anfwier it.
Of Socage.

whether he hath occu-
pied the lands or ten-
cements as gardain in 
foage or no. But quære, 
if after the heire hath acc-
companied the judge of 
the ffage, and the gar- 
dain in foage continu-
ally occupieth the land 
until the heire comes to 
full age, ft. of 21 years, 
if the heire at his full 
age shall have an a-
dion of account against 
the gardain, from the 
time that he occupied after 
the said 14 years, as gardain in 
foage, or against him 
as his bailife.

when the heire will, eit-
ether before his age of 21 years, 
or after (2).

Sect. 125.

If a gardain in 
chivalry face 
be not executi-
ble, the heire 
shall have 
deia age, &c. 
The executors 
ought to go 
the garde 
lieutenant 
ade, &c. 
If a gardain in 
foage face 
be not executi-
ble, the heire 
shall have 
deia age, &c. 
if the executors 
ave 
not the garde 
&c. 
E man 
fi 
be 
&c. 
A Son proper 
life, &c. 
A tenent 
foage, &c. 
A tenent 
foage, &c. 
A tenent 
foage, &c. 
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foage, &c.
Cap. 5.

that is a prerogative that be-

oung to the king to provide for
the church being void, for
where the service by knigh-
t service is of a common
-

person, the executors of the

testator shall profit where the
avoidance fall in the life of the

testator.

Le heire of such

remedy, &c.

For albeit in

an account against a

-


guardian in focage, &c.,

the defendant cannot

with his law, yet in re-

spect of the privy of the

matters of account, and

the discharge relating to the

knowledge of the parties there-

unto, an account of neither

party against the executors

of the accountor, nor

at the common law for

the executors of him to whom

the account is to be made as is

after said (2) but that it holpen by statute (4).

It hath been

ever attempted in parliament to give an

account against the executors of a guardian in

focage, but never could be effected (2).

Si non pur le roy folemente.


Vid. Selb. 171. Statut. Praem. 35.


Vid. Com. 156. Pl. Com. 156.


[7] Ibid. fol. 61, &c.


Soeage.

Sect. 126.

cause the guardian in

chivalry hath the

wardship to his own

use, and the guardian in

focage hath not the

wardship to his own

use, but to the use of

the heir. And in this

case where the guardian

in focage dyeth before any

account made by him to

the heir, of this the heir

is without

credit for

releaseness for the

executors (2), but for the

king only.

')
Lib. 2.

Of Sogage.

payment be to pay at two terms of the yeare, or at 4 terms in the yeare, the lord shal have of the heire of his tenant as much, as the rent amounts unto, which he payeth yearly. As if the tenant holds of his lord by fealty, and tenne shillings rent payable at certaine terms of the yeare, then the heire shall pay to the lord ten shillings for relief, besides the tenne shillings which he payeth for the rent.

In the same manner it is, if a man be feited of certaine land, which is holden in socage, and maketh a freeement in fee to his owne use, and dieth feited of the use, (the heire of the age of 14 years or more, and no will by him declared) the lord shall have reliefe of the heire, as aforesaid. And this by the statute of 19. H. 7. cap. 15.

Sect. 127.

AND in this cafe, after the death of the tenant, such reliefe is due to the lord present, of what age soever the heire be; because such lord cannot have the wardship of the body, nor of the land of the heire.

Lord dinnarie for which of (c. Cohe 37. a. Ra. Ate. 159.) then he will. But if the tenure be to attend on his lord at the feast of Christmas, or to pay ten shillings, there the relief must be ten shillings, because the other cannot be doubled; et de fide familiae.

A pair annuall. If the tenant holdeth of his lord by fealty, and to pay every two of three year ten shillings, albeit this be no annual rent, yet shall he pay ten shillings for reliefe; et de fide familiae.

But it is to be noted, that biddeth reliefe, whereas Littleton here speaketh, there belonged to a tenure in socage of common right, and for the making of his eldest son a knight at the age of fifteen years, and to marry his daughter at the age of 7 years (11).

(1) We have already had occasion to observe, that these aids are taken away by the 25. Chas. 1. c. 15. Anste 26. a. note 1.—

(2) This part about relief from the heir of ephemer age, as lord Coke truly observes, is an addition to Littleton; and it first appears in Hutton. See p. 127. 2.

in equal degree, were equally capable of interfering; and the Emperor Julian having wholly deprived the distinction between the agent and cognizant, there could not be proxinitie of blood without proxinitie to the cognizant. Novell. 15. c. 4. 5. Such being the difference of the two laws in point of succession, it is rather for the sake of others in point of guardianship. Besides nearest of blood alone is at least a very considerable rule for settling the right of guardianship. It must frequently give a title to those, who are in every respect the least qualified for a trust so delicate and important. Nearest of blood ought to be greatly regarded; particularly in the case of parents, whose title by nature is so strong, that to yield from them the custody and education of their children, except when there is any gross misconduct or the most apparent incapacity, would be very foolish indeed. But personal qualities, situation of life, interest in the succession, and other circumstances, whether operating for or against, should also be attended to; and hence arises the necessity of a discretionary power in the choice of guardians. On this principle in many countries in Europe the father is now invested with the power of appointing guards.
Lib. 2. Cap. 5.

Of Socage.

The heire. Et le seignior en tel cefe ne doit attendre a le payement de son reliefs, solonques les termes et jours de payment de rente; mais il doit avoir fon reliefs main-tenant, et pur cef il fait incontinent (1) dufaindre aprés le mort son tenant pur reliefs.

De quel age que la heire fott. And yet it appeareth in our books, that in this case the king in case of a tenant in socage in which he shall not have primer &c un allis the heire be of the age of 14 years at the death of his ancestor or for if he be under that age, he is in the gain and custody of his proceeds any.

But otherwise is in case of a common perren, as here it appeareth. And where in some imprestions these words be added (effet que il faisoit lege ac de 14 ans), these words so added are as

Sect. 128.

EN mefme le maner eft, lou tenant tient dufon seignior per faltit et un lib. de pefer ou cummin, et le tenant manoir, le seignior avera pur relied un lib. de cummin, ou un lib. de pefer, aufer le common rent. En mefme le maner eft, lou tenant tient dufon payer per an certaine number de capons, ou de gallines, ou un certaine de graunts, ou certaine buflets de frument, et hitujumnedi.

Note. (1) But here we must understand Littleton to be speaking of a relief due on the death of a free fimple in feoff in solicitation, for if only a remainder on reversion expedit on an estate for life descend on the heir, the relief is not leviable till the death of the tenant in life. Keiz. 65. b. Kitch. ed. 1728. fo. 146. b. As to the deciding of a remainder or reversion expedit on an estate tail, it seems doubtful whether a relief is payable at any time in relief of such a tenant. Keiz. 84. a.

(2) See note 1, b. note 4.

(3) Accordingly the words objected to by lord Coke are neither in L. and M. nor Rob.—They were first inferred in P.

(4) But Rolle tells us, that Muter Herbert of the Inner Temple in his autumn reading 1 Chin. 1, held the contryny. 2 Ro. Aitch. 515.

UN lib. de pepper ou cummin. Here it is to be observed, that the lord may require pepper, or any other things that be cation, foreign of the growth of outlands countries as beyond seas; as well as of the growth of England, whereby navigation (the life of every land) is employed.

And where Littleton here putts his case in the disjunctive, if the tenant doth hold by feall and one pound of pepper or a pound of cummin, he shall pay for relief a pound of pepper or a pound of cummin, over and besides the rent. But if the tenant holdeth of his lord by doing of certaine works dayes in harvest, or so attend at Christmefse, or such like, he shall not double the same; for of corporall service or labour or works of the tenant, no relief is due, but where the tenant holdeth by such yearly rents or prifets, which may be paid or delivered, wherein Littleton hath put his examples; and by them is manifeestly proved, the corporall service, work, or labour, shall not be doubled in this case (2).

Ou certaine buflets de frument. Here it appeareth, that the relief of buflets of corn is to be paid profusely, though the tenant die in winter before corn be ripe.

Note, here are examples put of five natures. 1. Aromatum exotica, of spices or drugs of outlandish growth. 2. Gramatum, of corn of English growth. 3. Arborum collectionem, of the woods, as capons, bees, &c. 4. Artificiarum, of handcrafts, as a pair of gloves generally either of outlandish or English. 5. An familiarium, or such like, (that is) of like outlandish growth or of English growth, or of produce, or of articles outlandish or English, and like herein also, that they may be paid or delivered to the lord every year, or every second or third year, &c.

Sect. 129.

MES et eis cum leseigneur doit demourer et differiren par sa relisije jolq une certaine temps. Si comme le tenant tient de son seigneur per un rofe, ou per un buelf de rofes, a paier al seaf de Natavie de Saint John Baptishe, si tiez tenant devier en yeur, done le seigneur ne peut differiren par son relieje, tanque al temps que rofes per le courfe del an point ont leur crifier, &c. et sic de simililibus.

PER le coure de del an (foot 137 b.)

BUT in some case the lord ought to play to difference for his reliefe until a certaine time. As if the tenant holds of his lord by a rofe, or by a buelf of rofes, to pay at the feast of St. John the Baptist, if such tenant die in winter, then the lord cannot disfreine for his reliefe, until the time that rofes by the course of the yeare may have their growth, &c. and so of the like.

Sect. 130.

ITEM si eis voile demand, par que honne soit per fer- alty taufement par tous manieres des services, entant que quant le tenant ferra fealty, il jurera a son seigneur que il ferra a son seigneur taufement manieres des services dures, et quant il ad

ALSO if any will aske, why a man may hold of his lord by fealty only for all maner of services, infomuch as when the tenant shal do his fealty, he shal swear to his lord that he will do to his lord all manner of services dures, and when he hath done fealty in

QUANT le tenant ferra fealty, il jurera a son seigneur, &c. Here it appeareth, that the doing of the fealty is both a performance of his service, and of his oath also when it is done, for that no other service it due; and that one oath of fealty is taken of all that hold, and is not to be changed for any novelty or nicety of invention; for judges anciently and continually have suppressed inventions, and would in no case change the ancient common law.

Should not be understood to affect that a guardian by nature is not accountable for the profits of the infant's estate; but being a doctrine, which from inconsideration with the nature of every other kind of guardianship escape guardianship in duty.

It is therefore presumed, that lord Coke's meaning was, that the father shall be deemed guardian in foyere, because in that charter the law makes him accountable to the LAN for the value of his marriage as well as for the profits of his lands, whereas