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

Here is to be observed that the fosse and ditch which is a new fosse and ditch that is fit to be so joyned; for an excessive effort is controll'd by an imposed edition, as hath been said.

AND the like law is, if the fenestment be made of a third part or a fourth part, etc. And if there be an aduersion apparent, they are also tenants in common of the aduersion. (3) And albeit it is said, that such a fenestment of a moiety or third part, etc. is not good without writing, for that (as they say) a man cannot create an uncertain estate in land by parlour; yet is the law else, that such a fenestment is good by parloured without writing, and such an uncertain estate shall pass by livery, and so it appears in our books.

If a verdict finde, that a man hath these parts manorly, etc. in three parts desco, this shall not be intended to be in common; but if verdict be in three parts desco, then it seems, that they are tenants in common by the intention of the verdict. (4)

But if a man be seid of a manner whereunto an aduersion is appendent, and maketh a fenestment of three acres parcell of the manner togethers with the aduersion to two, to have and to hold the one moiety together with the moiety of the aduersion to the one and his heirs, and the other moiety together with the other moiety of the aduersion to the other and his heirs, this cannot be good without deed; for the feoff of cannot annex the aduersion to these three acres, and ealiens it from the rest of the manor, without deed. (5)

ET of aforesaid, that en meigne le manner came es avancit de tenans in common, de terres ou tenements en fee simple, ou en fee taile, et en meigne le manner poit eire

AND it is to be underfoot, that in the manner as is aforesaid of tenants in common, of lands or tenements in fee simple, or in fee tail, in the name of

AND also if lands be given to two to have and to hold, the one moiety to the one and to his heirs, and the other moiety to the other & to his heirs, they are tenants in common.

AND also if a man seid of certain lands interesteth another of the moiety of the land without any speech of assignment or limitation or limitation of the moiety in severality at the time of the fenestment, then the feoffor and the fecof shall hold their parts of the land in common.

MUSEUM
BRITANNICVM
TO THE
PURCHASERS
OF THE
NEW EDITION
OF
COKE UPON LITTLETON.

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

* The Coke upon Littleton, exclusive of the preface and index, consists of 393 folios in 796 pages. Mr. Hargrave has proceeded in the new edition and actually published to the end of folio 190 or page 375, which is exactly 13 folios short of one half of the work.
it will qualify his unhappiness at the painful and trying moment of separation from a very favorite work before its advancement into maturity. Should a left indulgent construction be applied to the editor, it will deeply wound feelings already enough exercised; but from a conscientious of being open to some degree of exception for what rigid observers may file, the abandonment of a work long promised to be completed, he must in that case kifs the rod, and submit himself to the severity of animadversion with a patient humility.

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

FRA. HARGRAVE.

Boswell Court, 18 Jan. 1785.

* Charles Butler, of Lincoln’s Inn, Esquire.
ADDRESS
FROM
Mr. HARGRAVE,
TO THE
PURCHASERS OF THE NEW EDITION
OF COKE UPON LITTETON,
Announcing his Relinquishment of the Undertaking, and Mr. BUTLER's succeeding to it.
Light of song to involve her. 
55. G. 

In kindling words, judgment 
indicated. n. 5: 110 - but this 
should be bottom of 112. 

The Biginning. Canon. 2. 1. 39. a.
8 n. 3. 123. a. p. 3. a. ibid.

In the right on which Bishop 
set in the Trinity. cf. 159. p. 92.
94. a. 194. b.

On new or old Deaneries, 95.

ended
Protocols. 130. p. 181. b.

Weice
Eenche. 330. b. 166.
Right of jury to demand law in
their verdict, \\
Vol. 155, 5.

Avonmore Sal. of 1764, Vol. 95.
with the former part.

500 k. 5
THE FIRST PART OF THE INSTUTES
OF THE LAWS OF ENGLAND.
OR, A COMMENTARY upon LITTLETON.
Not the NAME of the AUTHOR only, but of the LAW itself.

Quid te vasa juvant imida ladubris chartae?
Hoc leges, quod possis dicere jure meum est.
Major hereditas venit unicune nudram a jure et legibus, quam a parentibus.

M A X T.
C I C E R O.

Hec ego grandevus posui tibi, candide lector,
AUTHORE EDWARDO COKE, MILITAE.

THE THIRTEENTH EDITION,
REVISED AND CORRECTED.

WITH THE ADDITION OF
NOTES and REFERENCES,
FROM THE BEGINNING TO FOLIO 103 INCLUSIVE,

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

AND FROM FOLIO 103 TO THE END,
With the PREFACE and INDEX to the NOTES,

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

AND
AN ANALYSIS of LITTLETON,
Written by an Unknown Hand in 1658-9, but never before published.

LONDON:
PRINTED BY T. WRIGHT,
For E. BROOKE, (Successor to Melfi, Worrall and Tovey), Bell-Yard, near Temple-Bar.
M. DCC. LXXXVIII.
TO THE RIGHT HONOURABLE

EDWARD, LORD THURLOW,

BARON THURLOW OF ASHFIELD,

IN THE COUNTY OF SUFFOLK,

LORD HIGH CHANCELLOR

OF

GREAT-BRITAIN,

THIS WORK

IS,

WITH HIS LORDSHIP's PERMISSION,

RESPECTFULLY DEDICATED.
ADDRESS
FROM
MR. HARGRAVE,
ANNOUNCING HIS RELINQUISHMENT OF THIS WORK, &c.

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

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FRA. HARGRAVE.

B Hinlill-Court, 10 Jan. 1785.

* The Coke upon Littleton, exclusive of the Preface and Index, consists of 511 folios or 316 pages. Mr. Hargrave has proceeded in the new edition and actually published to the end of folios 150 or page 111, which is exactly 1/3 folio, 2041 of one half of the work.

† CHARLES ROGERS, of Lincoln’s-Inn, Esquire.

[4]
IN the original proposals for printing this work, it was mentioned to be then intended to include in it Lord COKE's Compleat Capableness, and the other Treatises which had been printed with some of the latter editions of the COKE UPON LITTLETON. It has, however, on further consideration been thought advisable to omit them, as having no immediate connection with this work; as also to avoid an unnecessary addition to the bulk and expense of the present volume. The insertion of them in this place was apprehended to be the least necessary, a separate collection of them being already published in an extenso volume.
TO THE

PRESENT EDITION.

THE reputation of LITTLETON'S TREATISE on TENURES is too well established, to require any mention of the praises which the most respectable writers in our country have bestowed on it. Now work on our laws has been more warmly or generally applauded by them. But some foreign writers have spoken of it in very different terms. At the head of thefe is Hottoman, who, in his Treatise "De Verbis feudalibus," thus expresses himself: "Stephanus Paquarius excellentissimi vir ingenio, et inter Parviores eundem dicendi facul[tur], praetens, libellum melius Anglicanum Littletonianum dedicet, quo Feodorum Angliorun jurarum expositionem, incondita, abridita, et inconcinne scriptum, ut facile appareat, verisimum esse, quod Polydorus Virginianus, in Anglici Historia, de Jure Anglicum relatius est, certum in eo libro, cum multitudine et salutaris studio, curatur." This passage from Hottoman is cited without any disapprobation in the 5th edition of Struwe's Bibliotheca Juris Selecta; but in the 6th edition of that work (Jesne 1756) it is qualified by the words "angustia sed parum apta font, quae Franciscus Hottomannus profert, etc." Gatzert, in his "Commentationes in Jurisprudentia Historicae Literarum de Jure communi Anglico," (Gottsegen 1765) gives the following account of Littleton and his works: "Egaliter haec, tempore, ut "discedat, familia et mediis longe superior fuit, immortalitatem nominis apud populos, il quis unus merito feceruit. Thomas Littleton, a quo jusur studium incolavit, hodie Angli, plane ut summo digno, ad edidit Frazorius et XII Tabullus, Romani. Hic, igiusti Sacces, ab eis foliis differtales academices, iura patria max sum plaude in Interiori Temple Londinien," quos pauci ante illetem difficerat, aliquantum temporis profecerant, ab Henrico VI. ad officium primo judicandi in curia Palatii vocatos eft. Advocati deinde ac procurators regii (king's "fejeante) numeri a 1455 admodum, judexque parte ambulatorius faec. provincia, in solutis "ad aures) et tandem inter judicantes communiam plactorum curiae a 1462 ab Edouardo IV. "rationes dignas habebat eft, quia multum ampliori, quem folostrat, stipendio ordinario adeo Balanti honoribas a 1275 demanare. Vivere definit a 1333. - Unicrum libro scripsit; sed quod plurimum fecit, ille scripturae traditionem et argumentum. In eo executu dedicatis juris principi difficillimium: gravissimam, utique quandam maxima commoditate turata" quidem, et mutatis scripturae fonte Anglico, quamnum eorum juric, obligationes, pratriciones atque sufficit. In usus quidem Richardo filii, et ad iuris quorumad et explicantu illos: eum aliquot opusculum de Tenures ab incerto autore Edouardi III. ab eo conservatur. Galliæ principi iusti compositum, max Gallicis deinde reformavit Anglico, max vero Gallicæ et Latine, typis egressus. Vicipнце quinquésiuridiconem reputatur, quot tribus libris, in quibus omne opinor differtetat, perfecctus est. Titulum hunc eft voluit Or Tenures. 

In anno editionis originales eft Cokle qui a 1533 positum differteta, ex quo circa a 1577 non die post inventas typographiae artes profuerunt, valde vera famelis in software "libro" Britann. W. qui cum Niccolino, p. 253. late eatis de argumento imprimus, et dividens libri egerunt. Edito decemcin 1738 fecutum vis. Cokle in praefatione fuit a "Littletonis Commentariis, de quo max differtat, Inter plura quia atque omnes concernent ejus et quos, XV. Etius nomines moneat alios appellat, qui oden tempore Reverent. Ebullic pro tere imaginem Littletonianam. Ceterum liber ob methodi brevitate, argumentandi subtilitatem, atque dictorum ordinem, fume omnino mereretur; sed nec minus fcrastum eft, sed fe etiam licetam exquisitatem, ut exiguerit legem manuerit, quam praecipua, tradere videatur. Multa jam immutata eft, plura inventarum atque editionem lex, non urgeat. Interim commenti Ictoriis Anglorum hac vox eft perfecctam et alii fustinamenta non opus esse ex omnibus quoeique in illa scientia humana scripta sint, quae unquam proferre tenuerit hominum ingenium, non intelligere cuiuslibet. In primum abest, quin credant, falsi eum falsis, eddicius!"

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

* This is a range which he used Littletone died in 1682.

Gravina, while he mentions his endorsement, has natural and acquired, with admiration, certainty of his wife of other judicial work is with great favour. He says: "Non modo in Accursianis et Bartolomini interpretibvs reprehenderit, sed in ipsi Tribunali "perpetuo exigitando, collectam tota vita opinionem verucucis acque modestia, profitus "amit." Grav. lib. 1. § 179.

Cujus also was supposed to allude to him in a passage of his work, where having occasion to mention the writers who find fault with the disposition and arrangement of the civil law, he says: "Quam illi fuit imprimisnull nam acque quidam unus fietiam; beque aterm digeruntam "et principé certa juris sive perpetae qualitatem: itaque tam ad siderum materia." But Hottomann's general disposition to abuse, is not the only circumstance by which his vitriolic criticism of Littleton may be accounted for. All the writings of the feudal laws of his own country, he might expect to find doctrines of a similar nature in Littleton, without adverting that the greatest part of Littleton's work treats of the subordinating and practical part of the laws of England, which, like that of every other country, is in a great degree exterior to it, and bears but a remote analogy to those of foreign authors. It is allowed, that the feudal policy of the different countries of Europe, is derived from the same origin; that there is a marked similitude in their principal institutions; and a singular uniformity in the history of their rise, perfection, decline, and fall. But the more we go from a general view of their constitutions and governments, to their particular laws and customs, the less this similitude and uniformity are discoverable.

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

But the mode by which it has been effected in England, is peculiar to England. In other countries, where a liberty of alienation has been introduced, it has rest on a kind of compromise with the lord, by paying him a certain sum; and a kind of compromise with the relations of the feudal authority, by allowing them a right of redemption, commonly called the "retrogratio." But the steps by which a free alienation of property has obtained, in England are very different. In England an unlimited freedom of alienation of socage and military land was soon allowed; the practice of sub-infeudation was soon abolished; the alienation of lands was restrained by the introduction of conditional fees, and afterwards by the introduction of equations, and estrates tall; again the liberality of the courts of justice, and they were eluded by the doctrines of discontinuance and warranty. In the course of time, a fee was made a bar to the claims of the fee in tail, and a common recovery to the claims both of the issue and of those in remainder and reversion. Most of these anomalies are peculiar to the history of England. The compiler of the foreign feudals, with an expectation of finding there something applicable to the practical parts of the law of his own country, respectful of the alienation of landed property, will be greatly disappointed. He will find the most positive prohibition of alienating the fee without the consent of the lord; he will find every nice and subtle distinction of what amounts to an alienation; he will find that, in some countries, the lord's consent still continues a favour, that in others it is a right, which the tenant may claim on rendering a certain fine. In short, he will find the works of foreign feudals filled with accounts of the "jus " retroversi, or " droit de racheter," the " retrait libre," and the " droit des seigneur," which states that the same may be observed on the doctrine of conditions. According to the first principles of the feudal law, no conditions could be annexed to a fee, except the implied conditions to which every fee was subject, from the obligation of service on the part of the tenant, and the obligation of protection on the part of the lord. Every fee to which any express or connexionary condition was annexed, was, from that very circumstance, ranked among improver fees. But fees in England were at all times susceptible of every kind of condition.

It would be easy to pursue these observations through the fabulous chapters of Littleton's Tractate. Even if we consider the subject on a more extensive scale, we shall find some circumstances peculiar to the English law, which must necessarily occasion a very essential and marked difference between the constitution and forms of the government of England and the constitution and forms of the government of other countries. Such are the universal conversion of allodial lands into fees; the total abolition of sub-infeudation; the freedom of alienation of estates in fee-simple; and the limited and dependant situation of our nobility when compared with the situation of the high nobility of foreign countries: all these are peculiar in a great measure to our laws. It follows, that our writers must be silent on many of the topics which fill the immense volumes of foreign feudals; and they, from the same circumstance, must be the most silent on many of the subjects which are discussed by our writers. That is so, will appear to every person conversant with the ancient writers on our laws, who will give a cursory look at the writers on the feudal laws of other countries. Nothing in this respect can be more different.
different than those parts of the writings of Bradon, Britton, Plata, Littleton, Sir Edward Coke, and Sir William Blackstone, which treat of landed property, and the books of the first three authors, cited above, speak of Littleton. They may also account, in some measure, for a circumstance which has been a matter of some surprise, the total silence of Sir Edward Coke on the general doctrine of fiats. It is obvious, how extremely deficient his treatise is upon every occasion to give the scions of the doctrines laid down by him; and what force, and sometimes even puzzle reasons, he assigns for them; yet though so much of our law is supposed to depend upon feudal principles, he never once mentions the feudal law.

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

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

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

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

If we were proper enter into a further defence of Littleton, it might be done, by observing, that it must be a matter of great doubt, whether Hottman, or any other writer, men the word, can ever confound the chapters of Littleton which

* This is the first time the term "feudal" was used in the general collection of his works. An abridgment of it was published in 1755 by Mr. H. Johnson of Parton, under the title of "Treatise of Feuds on Montfau, Analyzed, and Confirmed with the Ante Fideles."
The reputation of SIR EDWARD COKE'S COMMENTARY is not inferior to that of the work which is the subject of it. It is objected to it, that it is defective in method. But it should be observed, that a want of method was, in some respects, inevitable from the nature of the undertaking. During a long life of instruction and unremitting application to the study of the laws of England, Sir Edward Coke had treasured up an immensity of the most valuable common-law learning. This he wished to preserve to the public, and make that mode of doing it, in which, without being obliged to dwell on those doctrines of the law which other authors might explain equally well, he might produce that profound and recondite learning which he felt himself to possess above all others. In adopting this plan, he appears to have judged rationally, and consequently ought not to be censured for a circumstance inseparable from it.

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

It is sometimes said, that the praise of his Commentary is now become useless, as many of the doctrines of law which his writings explain are become obsolete; and that every thing useful in him may be found more systematically and agreeably arranged in modern writers. It must be acknowledged, that when he treats of those parts of the law which have been altered since his time, his Commentary partakes, in a certain degree, of the obscurity of the subject to which it is applied; but even where this is the case, it does not often happen that the doctrines laid down by him do not serve to illustrate other parts of the law which are still in force.

Thus, there is no doubt but the cases which now come before the courts of equity, and the principles upon which they are determined, are extremely different in their nature from those which are the subject of Sir Edward Coke's researches. Yet the great personages who have presided in those courts, have frequently recourse to the doctrines laid down by Sir Edward Coke, to form, explain, and illustrate their decisions. Hence, though portions charged upon royal estates, for the benefit of younger children, were not in Littleton's time, and not much known in the time of Sir Edward Coke; yet on the points which respecting the vesting and payment of pensions, no writings in the law are more frequently or more successfully applied to than Sir Edward Coke's Commentary on Littleton's Chapter of Conditions. It may also be observed, that notwithstanding the general tenor of the prefatory matters of our courts, cases must frequently occur which depend upon the most abstruse and intricate parts of the ancient law. Thus the case of Jacob v. Wheate led to the discussion of echeats and usus at the bar before the statute of Henry VIII. and the case of Taylor v. Horde turned on the learning of diffidence.

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

It has not yet been settled, and perhaps cannot now be settled, with any degree of precision, when the first Edition of Littleton's work was printed. Sir Edward Coke's mistakes respecting the Roman edition, are pointed out in the note taken from the 12th edition to that part of his Preface, Doctor Middleton. In his Account of Printing in England, conjectures the edition by J. Lettou and W. Machilitha, to have been printed in 1481, and that it is the first edition. This makes the printing of the book to have been within six or seven years after Caxton's introduction of the art into England, and within twenty-four years after the first invention of it. Dr. Middleton's conjecture is supported by the concurrent circumstance of the time when those printers appear to have been in partnership; and no other edition bears evidence of a prior title to antiquity. Another edition of nearly equal pretensions to precedence with the Lettou and Machilitha edition, has lately appeared from the library of the late William Hayton, Esq. It has remained hitherto undescrybed, and was probably unknown to all who have undertaken to notice the several editions of this work. At the end it is said to be printed by Machilitha alone, then living near Fleet-bridge; from which, and other circumstances, it is clearly distinguishable from the former edition. The letter used in printing it is in itself, and more like the modern English black letter, than the letter used in the joint edition of Lettou and Machilitha, and the abbreviations are much less numerous. These circumstances afford some, though but a faint ground to suppose it posterior in date to the former.

Mr. Harrgrave has both these editions. In 1766, Mont. Hounard, an Advocate in the Parliament of the late William Hayton, Esq. It has remained hitherto undiscribed, and was probably unknown to all who have undertaken to notice the several editions of this work. At the end it is said to be printed by Machilitha alone, then living near Fleet-bridge; from which, and other circumstances, it is clearly distinguishable from the former edition. The letter used in printing it is in itself, and more like the modern English black letter, than the letter used in the joint edition of Lettou and Machilitha, and the abbreviations are much less numerous. These circumstances afford some, though but a faint ground to suppose it posterior in date to the former.

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The first Edition of Sir Edward Coke's Commentary upon Littleton was published in his lifetime, in 1628; its very incipient stages. The second edition was printed in 1635, and is supposed to have been revised by the author. The subsequent editions, to all extents and purposes, seem to have been printed from the second, without much variation. The third edition includes, besides Sir Edward Coke's Reading on Fines, and his Treatise on Bail and Main-prize. The second edition is added, the Complete Copyholder, with many references. In the seventh edition the book is called the "Tenores Novelli," and distinguished by it (it is prefixed) from the Tenores of Old Tenures. The eleventh edition has also several new and additions, trading principally to shew the alteration of the law since the time of Littleton and his commentator. The twelfth and last edition was published in 1735. Some observations upon it may be found in Mr. Hargrave's Address to the Public, on his undertaking this present edition. An abridgment of Sir Edward Coke's Commentary was published in 1714, by Mr. Gervase Hawkins; but pointed observations are occasionally introduced in it, to explain the principles of the old law, and the alterations made in it by subsequent Statutes.

Mr. Hargrave began this present edition, by publishing it in Numbers. Soon after his publication of the First Number, he was favored with Lord Chief Justice Hale's manuscript notes. By an advertisement prefixed to the Second Number, he informed the public that they were very numerous, and as far as the Chapter of Knight Service; that there were from the fabulous parts of the work; and for the communication of them, he was indebted to the liberal spirit of a noble lord, who, he observed, had ever distinguished himself.

The Preface to the Present Edition was published in 1747. The Preface to the Present Edition was published in 1747. The Preface to the Present Edition was published in 1747.
his self as a zealous encourager of undertakings having the least tendency to promote science and learning; that it is the original, some of the notes were in Latin, but most of them in Law-French; and that it was thought most convenient to give the latter in an altered English translation. Upon the publication of the Second Number, Mr. Hargrave received from Sir William Jones an account of some few various readings from two English manuscripts of Littleton's Tenures. By an advertisement prefixed to the Third Number he informed the public, that both of these manuscripts were in the public library at Cambridge, being marked D d 11, 60, and M m 22; that the first was written on vellum, and was imperfect at the beginning, and in the Chapter of Warranty; and that the second, which seemed to be the most valuable, was written on paper, and had only one leaf torn, and that its antiquity appeared from the following note in the first page:

_Le liber empris fact in consertio Sti. Petri._
London, 1710 die Julii, anno 1705 xiii. E. 411. xva. 124. 6d.

that this date showed that the manuscript was of Littleton's time, July 20 of 1641, which was the year before Littleton's death; that in referring to the manuscripts, that in vellum would be distinguished by Vell. M S. and that in paper by Paper M S. With these assurances Mr. Hargrave completed that part of the editio which is executed by him. He then relinquished the work, and, by an Advertisement (which immediately preceded this Preface) he informed the public of it, and of the present editor's undertaking to continue the work.

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

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

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

"T. Parker, 1750."

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

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

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

CHARLES BUTLER.
Deo, Pateriæ, Tibi,

Proemium.

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

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

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

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

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

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

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

He was of the Inner-Temple, and read learnedly upon the feature of W. 2. De donis conditionibus, which we have. He was afterward called ad flamum [a] et

The name and degree of our author.

His arms.

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

Thomas Wescote.

Our author bare his mother's surname.

Camden.

[*] The best kind of quartering of arms.
Preface.

King's fondnest, Rot. Pat. 32 H. 6. parr is. m. 16.

Mise 50. H. 6. fol. 3. m. 15.

Judge of the Common Pleas, Rot. Pat. 6 E. 4. parr 1. m. 15.

Knight of the Bath, 13 E. 6.

When he wrote this book.


Litt. Soc. 692. 723 & 740.

The degrees of his contemporaries.


[f] Oliveved our author.

[g] Survived him 50.


[i] Survived our author.


[m] Removed 2. E. 4.


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

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


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

And though we wish by our labours (which are but cynahola legis, the cradles of the law) delight and profit to all the students of the law, in their beginning of their study (to whom the First Part of the Institutes is intended), yet principally to my loving friends, the students of the honourable and worthy societies of the Inner-Temple, and Clifford's-Inn, and of Lion's-Inn also, where I was some time reader. And ye of them more particularly to such
such as have been of that famous university of Cambridge, almo occa mater.
And to my much-honoured and beloved allies and friends of the county of
Norfolk, my dear and native country; and to Suffolk, where I passed my
middle age; and of Buckinghamshire, where in my old age I live. In which
counties, we, out of former collections, compiled these Institutes. But now
return we again to our author.

He married with Johan, one of the daughters and coheirs of William
Barley, of Broomcroft-castle, in the county of Salop, a gentleman of an-
cient descent, and bare the arms of his family, argent, a fess checquy or and
azure, upon a lion rampant fable, armed gules; and by her had three sons,
for William, Richard the lawyer, and Thomas.

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

He made his last will and testament the 23d day of August in the twenty-
first year of the reign of king Edward the fourth, whereby he made his
three sons, a parson, a vicar, and a servant of his, executors; and consti-
tuted supervisor thereof, his true and faithful friend, John Aiston, doctor
of law, of the famous university of Cambridge, then bishop of Wor-
cester; a man of singular piety, devotion, charity, temperance, and hol-
ines of life; who amongst other of his pious and charitable works, founded
John College in Cambridge; a fit and a fast friend to our honourable and
virtuous judge.

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

Littleton is named in 1. H. 7. and 21. H. 7. Some do hold, that it is no
certainty in the reporter or printer, but that it was Richard the son of
our author, who in those days professed the law, and had read upon the
nature of 14. 2. quod nulli per mittendas, and who his father dedicated
his book: and this Richard died at Pillerton-Hall in Staffordshire, in

The body of our author is honourably interred in the cathedral church
of Worcester, under a fair tomb of marble, with his name or portraiture
upon it, together with his own match, and the matches of some of his an-
ccestors, and with a memorial of his principal titles; and out of the mouth
of his name proceeded this prayer, Dei Dei majorum, which he himself
caused to be made and finished in his lifetime, and remaineth to this day.
His wife Johan, lady Littleton, survived him, and had a great inheritance
of her father, and Ellen her mother, daughter and heir of John Grenock
esquire, and other his ancestors, to sir William Littleton her son.
THE PREFACE.

This work was not published in print, either by our author himself, or Richard his son, or any other, until after the decease of both of our author and of Richard his son. For I find it not cited in any book or report, before sir Anthony Fitzherbert cited him in his Natura Brevium; who published that book of his Natura Brevium in 16. H. 8. Which work of our author, in respect of the excellency thereof, by all probability should have been cited in the reports of the reigns of E. 5, R. 2, H. 7, or H. 8. or by St. Jermyr in his book of the Doctor and Student, which he published in the three and twentieth year of H. 8. if in those days our author's book had been printed. And yet you shall observe, that time doth ever give greater authority to works and writings that are of great and profound learning, than at the first they had. The first impression that I find of our author's book was at Roan in France, by William de Talier (for that it was written in French) ad infansiam Richardi Pinson, at the influence of Richard Pinson, the printer of King H. 8. before the said book of Natura Brevium was published; and therefore upon these and other things that we have seen, we have of opinion, that it was first printed about the four and twentieth year of the reign of King H. 8. since which time he had been commonly cited, and (as he deserves) more and more highly esteemed.

His picture.

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

* This opinion of my lord Coke's, concerning the time of the first impression of Littleton's Tenures, although it hath been followed by sir William Dugdale, in his Originals Juridicatae, and by bishop Nicholson, in his Historical Library, is certainly erroneous; for it appears by two copies now in the bookshelf's custody, that they were printed twice at London in the year 1558, once by Richard Penson, and again by Robert Redmayne; and that was the fourteenth year of the reign of H. 8. To determine certainly when the Rohan edition was published, was almost impossible; and before any conjecture can be offered on that subject, 'twill be necessary to consider how conclusive the arguments his lordship draws from our author's not being cited as authority in the books he mentions may be: it either proves what his lordship affirms, or elicits that Littleton's authority was not then so well established as 'tis now (for which he gives us here a very good reason): and that this left is true, the afore-quoted citation do sufficiently evince, for their titles and conclusions run thus: "Littleton's Tenures, newly and most truly corrected." And in the end, Explicit item Littleton casu alacrimaevus coramme et additamentum novum, necesse est alio nun minus palliabitur: nam, hithe very additions are incorporated into the book itself, nor are they distinguished by any mark from the Original. The weakness of this argument will further appear, if it should be applied to the discovering the time my lord Coke's Commentary on Littleton was first published, for it was not cited as authority for some time after its publication. The old editions abovementioned, Pynson's and Le Talierc's name in the end of Rohan's edition, are to be the only means of discovering what we seek. From those editions we may collect, not only that the Rohan impression is older than the year 1558, but also by what occurs in the beginning and end of them, that there had been other impressions of our author. From Pynson's name at the end of the Rohan edition, it may be concluded that he would not have engaged his friend William Le Talierc to have printed Littleton at Rohan, had he ever before printed any books in French; and that he printed an Abridgment of the Scuttra, part of which is in French, in the year 1599, appears by one of those books now in the same person's custody. Salterman's Abridgment has his name to it, but there is no date, yet it being printed with the same type, and in the same manner, Littleton was at Rohan, and as it is a larger book, it is highly probable 'twas printed some time after the publiction of Littleton's Tenures, and that Pynson's successors in the latter undertaking induced him to venture on the greater; which in those days was the work of two or three years. William Le Talierc printed a Chronicle of the Doctry of Normandy, as appears by his name and cypher at the end thereof, and the date is in the beginning in the year 1597. The book itself is being lost; but the title-page, initial letter of the chapters, number of the leaves or year, and in a character much resembling writing, and with such abbreviations as are used in manuscripts: all which 'tis well known to those who have seen many old books, are undoubtedly proofs of a book's being printed when that art was in its infancy. Upon the whole, it may certainly be concluded, that the book was printed some years before 1571; because the abovementioned Chronicle, which hath not such marks of antiquity, was printed in that year; and from what has been observed concerning the manner 'tis printed in, it will be thought by those who are versed in ancient books, to have been published ten years before that time. Now to the 11th Edition.

† This book appears to have been first published by J. Ratcliff, 1619. Amen.
well observes him, the more shall he justly admire the judgment of our
author, and increase his own. This only is declared, that he had written of
other parts of law, and especially of the rules of good pleading, (the heart-
string of the common law) wherein he excelled; for of him might the
saying of our English poet be verified:

"Thereto he could insinuate and make a thing;
There was no sight could pinch at his writing;"

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

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

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

[ b ]

We
THE PREFACE.

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

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

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

I cannot conjecture that the general communicating of these laws in the English tongue can work any inconvenience, but introduce great profit, seeing that Ignorantia juris non excusat, Ignorance of the law excusat not. And herein I am justified by the wisdom of a parliament; the words whereof be, "That the laws and customs of this realm the rather should be reasonably perceived and known, and better understood by the tongue used in this realm, and by so much every man might the better govern himself without offending of the law, and the better keep, save and defend his heritage and possessions. And in divers regions and countries, where the king, the nobles, and other of the said realm have been, good governance and full right is done to every man, because that the laws and customs be learned and used in the tongue of the country," as more at large by the said act, and the purview thereof may appear: Et semel apert et officium tutum legitum. No man ought to be wiser than the law.

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

* See the additions to this new edition, No. 74 and 81.
THE PREFACE.

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

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

Before I entered into any of these Parts of our Institutes, I acknowledging mine own weakness and want of judgment to undertake so great works, directed my humble suit and prayer to the Author of all goodness and wisdom, out of the Book of Wisdom; Pater & Deus misericordiae, da nobis salutem tuae, quom afflictemus in miseriae, misere evasites tuos & tuam magnitudinem tuae, ut mecum sit & mecum laboras, ut facias quid acceptum sit opud te! "Oh Father " and God of mercy, give me Wisdom, the assistant of thy seats! Oh send " her out of the holy heavens, and from the seat of thy greatness, that the " may be present with me, and labour with me, that I may know what is plea- " fing unto thee." Amen.

Our author hath divided his whole work into Three Books. In his First he hath divided estates in lands and tenements, in this manner: for res per divi- L 4. c. 10. fionem medius aperiantur.

Bradford.
THE PREFACE.

A Figure of the Division of Possessions.

By the common law

By custom, these may be so divided as estates have been by the common law.

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

[*] See the first remark to the Preface.

Exegi. Invito de parte una perfecta, into a new cognita, de en judicare.

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

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

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

J. E.
ANALYSIS

of

LITTLETON.

February 21, 1658-9.

Synopsis totius Littleton Analyticè.

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The heirs of the part of the father shall inherit, and then on the part of the mother, 4.

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A release of real actions can be pleased by none but the tenant of the land, 494.

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Confirmation. Lib. 3, cap. 10.

The force of it, s. 55. in which these words did not convey any amount to so much as confirm; in which as some others inureth by way of extinguishment; as where the lord grants his rent to the tenant, or the grant of a rent-charge, s. 54. s. 54.

Where it inureth, viz. where there is such a possession before whereupon a confirmation may work; therefore if one take away my villain in gross, and I conceal his estate, it is void, s. 54. s. 54.

Expressly.

By implication; as if the heir of a disfranchised in by descent, the disfranchised jointed with him in a settlement, here is the confirmation only of the disfranchised, and the feu of the other; but if the disfranchised shall bring a writ of currie against the feuhee, grace now he shall plead this, s. 54.

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To take effect by w. y. or remainder, s. 54. s. 54.

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Attornment. Lib. 3, cap. 10.

Wherefore the lord, or he in reversion, grants the service of his tenant, or what lies in reversion by deed, s. 54. s. 54.

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Have sufficient before the grant, s. 54.

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Be the same person which granted; for then he cannot attorn to his own grant, s. 54. s. 54.

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By what person, viz. always by him who is tenant to the grantor; therefore,

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Of a reversion, s. 54. s. 54. s. 54.

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Abbot, Bishop,

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In law: as if an infant discontinues, and die in his infancy; for seeing such alienation should not have barred the infant himself, it continueth it shall not bar others, 633, 634, 635.
Remitter. Lib. 3. Cap. 12.

The reason of the name, viz. it is an ancient term in law when a man hath two titles unto land, and he cometh to possession by the latter; and when he is in, the law supposeth him in by the former, which is the tenor title, 679, and the cause thereof is, because he hath not man against whom to bring his action for his former title, 681.

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By act of law.

By purchase.

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The seme only, if the banns were then above, and after agree unto it, 677.

Warranty, as a legal concept, is when a person transfers property in the hope that the property will last for a certain period. The warranty is typically given by the seller to the buyer, assuring that the property will meet certain conditions. If the warranty is breached, the buyer may have legal recourse.

**Lineal, where a man maketh a feu, his son; the son of which is not for the interest of a defunct son, but because the land should have lineage descended if such warranty had not been, 703, 700, 715. The line is of the feu made by the mother with warranty, 713, 714.**

**Collateral. This is where he that makes the warranty is collateral to the title, and he upon whom the warranty defects cannot convey the land from the warranty, 704, 717, 755.**

**If the father, his son, and after make a feu with warranty, 704.**
**If a man be defunct of lands in fee, and have issue two sons, the youngest shall not be defunct of the warranty, this is collateral to the eldest, 707, 708.**

**The several kinds of it, which are, 709.**

**Warrenty. Commencing by different; as if the father, &c, be living for years, or at will, of his son, make a feu with warranty, 695; or if he be jointure with his son, and make a feu with all the warranty, 700. So if guardian in feoff and chivalry make feu, 692. So if a feu is immediately made a feu over with warranty, 702. Or if one make a feu of the house of A. B. with warranty to barrens of the country, for fear of whom A. B. departeth the house, 701.**

**The quality of it.**

**What words will make a warranty, viz. Warrrenz. only, 713.**

**What effect a warranty is of, viz. to bar or rebut, &c. Vide A. infra.**

**Lineal, for lands in fee, but not in fee tail without alias, 712.**

**Collateral barreth both, but in cases specially provided, 712, as by the Stat. of Gloucester the warranty of the tenant by the customary barreth not without alias, although it be by fine levied by the husband only, 724, 728, 729, 730, 731, 732. But tenant in dower or for life are not within the statute's compass, 725; yet if such warranty depend upon an infant, he shall not be barred, 726.**

**Commencing by different doth never bar, 697.**

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

**Whom they bar, viz. none but those upon whom they do defend; therefore they must needs attach in the ancestor, and the warranty by devise barreth not, 734; and warranty doth defend alms upon the heir, therefore it never defends upon the brother of the half-blood, 737, nor where the blood is corrupted, 745, 746, 747, or the common law, not by custom, as borough English, or goodwill, 734, 735, 736.**

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**At an end, 738.**

**Defeased, 735, 742, 743, 744.**

**How long they bar, viz. until**

**The warranty be released, and is on whom the warranty doth defend hath the relief to follow, 737.**
Services by which all Lands and Tenements are held.

In frankalmoine; which is, where a religious house or person having capacity to take the grant of lands holds by prescription, or by grant before 18 & c. 1, of any common person and his heirs, or by grant of the last time of the king and his heirs in eadem form liberum, without any certain service limited.

No fealty, no dilatory.

Acquittal by the lord against all lords paramount, for the not doing of which a writ of molie lies.

It may be changed into a simple tenancy by fealty.

When the lord of the land is not heir to the donor.

If the tenant grant over to a secular person.

For divine service; when a religious house or person enabled to take any lands in grant holds of his lord lands by any certain divine service to be done.

For the king, petit seigneury; which is, where one holds of the king himself, to render at some certain time some piece of armour or other thing touching the war.

Every effort or term, so that it be certain.

Every service but tenure in frankalmoine.

Every assignment and change of heir.

Homage: a service to be done to the lord himself by the tenant in fee simple, fee tail in his own or another's right once in his life, for which the lord cannot disprove after refusal, till the lord require it, and the tenant refuse.

Ordinary; which is to be done sometimes in the life of the tenant, upon legal recovery of lands held to the recoverer.

Ancestral; where the homage hath continued time out of memory of man in the blood of the lord and tenant.

Warranty, which binds the lord after the homage received.

Acquittal; to acquit the tenant of any service paramount.

Proper to the king only, grand seigniary; as to carry his banner, or do some corporal and honourable service.

With echeveau; which always draws to it homage, which draws to it fealty.

Without echeveau.

Knight's service; and it draws unto it ward, marriage, and relief.

Special escheveau, by the corporal guarding of a coffin or other place, with or without echeveau.

Common echeveau, uncertain.

Bond services are either

Regardant to a manor.

By the confession of the villaine himself in a court of record, which binds him and his issue after.

By prescription; that the lord and his ancestors have been feud of the villaine and his ancestors by grant of the lord who had him as regardant to his manor.

Every villaine may be enfranchised.

By his lord.

By himself.

* For which Vide A. subsequent page.
† For which also Vide B. subsequent page.
Services by which all Lands and Tenements are held. Continued.

Charged at an uncertain time: scruage certain.

In payment,

Certain rents:

A. Compound services common to the king with the subjects, consist

B. Every villain may be enfranchised by his own act.

During the lord's reversion, in burgage and by caddleguard, or otherwise; and for this rent the lord may disfrain of common right; and there are four kinds to him:

Refosum, 
Sepulcrum, 
Inchoare, 
Menacing of the demandant.

Rent chargeable forth of the land by equal partition between the coparceners, and then disfrain lies of common right; or ifing forth of lands by deed, and then the disfrain lies by deed; and the disfrains are five:

Refosum, 
Repieux, 
Inchoare, 
Menacing of the demandant, 
Denier.

Rent-seck ifing forth of the lands by deed, without any power of disfrain; and the disfrains are,

Inchoare, 
Denier.

To carry the lord's manure forth of his village to his land, and there to spread it upon the ground.

Not to marry his son or daughter without paying a fine to the lord.

By granting him liberty by his deed, with the word Manumission.

By bringing against him a praetia undulius, an action of debt, account, trespass, or appeal of felony; the villain not being indicted before, if the villain recover damages against his lord.

By granting to him an annuity, or lease by deed, or enfeoff him with livery without deed.

The lord's negligence.

Where in an action brought by bill, as executor, the lord pleads not by protraction that he is his villain.

Where in an action to his own the lord pleads not that he is his villain, but during his protraction it is found against the lord.

When he enters into religion; in which case the lord hath no remedy but by an action of the cause against the governor of the house.

When a freeman marries a née, the lord hath no remedy but an action of the cause, and the issue is free.

END OF THE ANALYSIS.
THROUGH the obliging interference of John Holliday, Esq, of Lin-
colin’s Inn, with the Executors of the Will of the late Sir Thomas Par-
ker, the Continuator of Mr. Hardgrave’s Edition of Coke upon Littleton
has been favoured with a Copy of the Notes of Lord Chancellor Not-
ttingham and Lord Hale, upon that Work. The following Account is given
of them in a Note in Sir Thomas Parker’s own Hand-writing.

"The Notes to this Book, in my Hand-writing, (except one Note in fo. 26,
and some modern Cales), were transcribed from a Copy of the Lord Chan-
celloor Nottingham’s Manuscript Notes, in the Margin of his Lord Coke’s
Commentary upon Littleton, which copy was made for the use of his
Son Henefoe Finch, Esq; Solicitor-general, afterwards Earl of Ayles-
ford, and is now in the Possession of the Honourable Mr. Baron Legge,
to whose Favour I am indebted for these Notes.

"The Notes in a different Hand-writing were transcribed from a Copy of
Lord-chief Justice Hale’s MSS. Notes, in the Margin of Coke upon Lit-
tleton, presented by Lord Hale to the Father of Phillip Gybbon, Esq;
which Copy was made for the use of the Honourable Charles Yorke, Esq;
His Majesty’s Solicitor-general. The Book, in which the Notes are in the
Hand-writing of Lord Hale, is now in the Possession of Mr. Gybbon;
and the Book from which those Notes were transcribed, by the Favour of
Mr. Yorke, is now in his Possession.

"T. PARKER. 1758."

All Lord-Hale’s Annotations, and all Lord Nottingham’s, with a very
few Exceptions, will be inserted in the Places to which they refer.
It may be proper to acquaint the Reader, that the following Work is con-
tinued on the Plan adopted by Mr. Hardgrave; and will be completed in
Four other Parts, one of which, till the Work is finished, will be given in
every ensuing Term.

TRINITY TERM, 1785.

Erratum. In 195, b. last Line; dele under the title Conditions.
TO THE

PURCHASERS

OF THE

NEW EDITION

OF

COKE UPON LITTLETON.

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

* The Coke upon Littleton, exclusive of the preface and index, consists of 393 folios or 786 pages. Mr. Hargrave has proceeded in the new edition and actually published to the end of folio 190 or page 750, which is exactly 13 folios short of one half of the work.
It will qualify his unhappiness at the painful and trying moment of separation from a very favorite work before its advancement into maturity. Should a less indulgent construction be applied to the editor, it will deeply wound feelings already enough exercised; but from a conscientiousness of being open to some degree of exception for what rigid observers may file the abandonment of a work long promised to be completed, he must in that case kiss the rod, and submit himself to the severity of animadversion with a patient humility.

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

FRA. HARGRAVE.

Befwell Court, 18 Jan. 1785.

'* Charles Butler, of Lincoln's Inn, Esquire.
ADDRESS
FROM
Mr. HARGRAVE,
TO THE
PURCHASERS of the NEW EDITION
of COKE UPON LITTLETON,
Announcing his Relinquishment of the Undertaking, and Mr. BUTLER's succeeding to it.
manner may it be of tenants for term of life. As if two joynte-
nants bee in fee, and the one let-
teth to one man that which to
him belongeth for term of life, and the other joyneth to
that which to him belongeth to
another for term of life, & c. the
said two leasees are tenants in com-
mon for their lives, & c.

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

Sect. 301.

A man let lands to two men for term of their lives, & com-
mon averius ducis vincti (1), and one of them granteth
his part to a stranger, whereby
the joynture is severed and
deth, here shall bee no
servitor, but the leofor shall
enter into the maine, and the
servitor shall have no adva-
antage of these words, et
vinti ducis avem com-
ti, for two causes. First, for
the
joynture is severed. Secondly,
for that these words are no more then the Com-
mon Law would have im-
ployed without them, and ex-
pressly given to the servitor
(Poll. 295. & Hob. 150. 268.)

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

Si jacent en sembla-
ble reason font en sem-
blable ley. Here Lutin-
teth one of the Maxims
of the Common Law. That wherefoere there is the like reason, there is the like law. Ubi
reason, ibi idem. &c. & e. si simile ratio, simile juris.
And therefore ratio passa allegata defecte
esse. But it must be ratio vera et legalis et non
apparent. And here it appeareth that argumentum a simili is good in law. Sed juxta idem
legit una eorum deorum inferius & eorum inferius, ut
in aliorum definitioni deficit ratio.

* Uc. not in L. and M. or Roh. 
+ Mefane added L. and M. but not in Roh. 
‡ he added in L. and M. but not in Roh.

(1) Here Lord Coke speaks only of a joynenteeship in which case, the words and the forewore of them are merely words of disguise and as without them the lands, upon the death of one joynente, go to the servitor. But in the creation of a joynenteeship, in particular case, it cannot be taken in this words. For the grant
of an estate to two and for the benefit of them, and the heirs of the forewone, does not make them joynentees in fee, but gives them an estate of freehold during their joint lives, with a contingent remainder in fee to the servitor. Whether, during their joint lives, the fee continues in the grantor, or remains in absence and whether they can vest their
estate; and what is the proper mode of conveyance to be used for this purpose are points which have been much agitated, and which, perhaps, are not yet quite settled. They were all mentioned in the case of Vick v. Edwards, 3 P. Wm. 372. In that case, lands were devised to B. and C. and the survivor of them, and the heir of such survivor in feoff to fall: lord Chancellor Pallet held that the fee was in absence; that the trustees joining in a base of the remainder, might make a title to a purchaser by way of escheat; and that the heirs joining might be of life, as it would supply the want of proving the will but that, in every other case, it would be void. Five years before this case was heard, the duchess of Marl-
borough having contracted to purchase an estate from the devisee in trust of sir John Wittewrumphe's will, where the devise
was worked in a manner similar to that upon which the case of Vick v. Edwards moved, application was made to Parliament for an act to make the conveyance of the estate to B. under the preamble of the act it is mentioned, "That the devise
of the premises by the will of Sir John Wittewrumphe was not effectual in the law to sell the absolute fee simple thereof
in the trustees' names, that being, by the words of the will, no fee vested but upon a contingent survivorship,
and which could not vest or take effect till after the death of two of the trustees."
But notwithstanding the clause of Vick and Edwards, it Item now to be the prevailing opinion thus. In those cases, the fee is not in absence, but remains pending, and subject to the contingency, in the grantor and his heirs. In support of which it is said, that the whole fee must be supposed to be in the grantor at the time of the conveyance; that so much of it as he does not part with continues in him, but that in this case there is something undisposed of, viz. the intermediate estate, till by the death of one of the parties the remainder and fee in absence, and the survivor, and the survivor; which, therefore, continues, as a part of his old reversion.
If that is a remainder limited on a contingency, and the contingency fails, the donor has the land again. This is called his powers of reverter in estates, and that this possibility of reversion is felt nothing to do with old rules. Besides, the law never supplies the fee to be in admixture, unless where it is necessary to occur to that construction in prefering some estate or right. But that
in the perfect case no such necessity exists. The cases of Carter and Barnardington. 1 Pl. W. 349. Purdy v. Rogers, 1 bone. 360, and many other cases of authority, strongly favour this latter opinion. — As to the question, whether the contingent en

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