Cap. 8. Of Releases.

Sect. 447.

die, the grandfather dieth, the father against his own son shall not extort; but if he, his son fill enter. And so note a diversity between a releasement, a releasement, and a war- ranty: a releasement that in case is void: a releasement is good against the fesfes, but not against the man himself: a warrant is good both against himself, and his heir, and his son, and his grandson.

And here are three diversities worthy of observation, viz. First, between a power or an authority, and a right. Secondly, between powers and authorities themselves. Thirdly, between a power and a possibility.

As to the act, if a man by his will devieth that his executors shall fall his land, and dieth, if the executors release all their right and title to the land to the heir, this is void, for they have neither right nor title to the land, but only what is within Lifezeho's cafe of a releasement of a right. And so it is if cey ye we had deviated that his executors should have sold the land. Albeit they had made a releasement over, yet might he sell it as he pleased, for his heirhood, that is the sale, for his authority in that sale is not given away by the devise.

As to the second, there is a diversity between such powers or authorities as are only to the use of a stranger, and nothing for the benefit of him that made the releasement (as in the case before) and a warrant or authority which revokes by its own power, in such its usual powers of revocation, when the fesf, hoh a power to alter, change, declare, or revoke the use (being intended for his benefit) he may release; and where the effects before were done by the will of the fesf himself, as by his releasement he may release them, and his warrant may revoke from any alteration or revocation, as it hath been resolved; which diversity you may read in art. 227. of cap. 3.

As to the third, before judgment the plaintiff in an action of debt releasement to the judge in the king's bench all demands; and after judgment is given, this shall not bar the present suit to have execution against the bailor, because at the time of the release he had but a mere possibility, and neither jus in re, nor jus ad rem, but the duty is to commence after a contingent, and therefore could not be released prefectly. So if the cause of a future, future do not the person all his right in the land, yet afterwards he may sue execution; for he hath no right in the land till execution, but only a possibility; and so I have knowledge it is adjusted.

Sect. 447.

In releasements of all the right which a man hath in certain lands, etc. it behoveth him to whom the releasements to be made in any cafe, that hee hath the freehold in the lands in due, or in law, at the time of the release made.

For in every cafe where he doth make a releasement from the releasement is made, hath the freehold in due, or in law, at the time of the release, etc. the releasement is good. (4)

As to the question of the person who the pasture the land is bound to, the pasture is bound to pay the necessity money, and render his body to prision, so they are lit in the nature of judges to the demandant: but in the common plea, the bail are bound to the plaintiff in a certain term. 5. Rep. 70. 10. Rep. 51.

such as are note 2. to page 119. The doctrine and exercise of the frequenters will be considered in a note to the chapter of Discriminations. A. 1. 2. 3. 4. 5.

I have not improved on this Scholium.

Sect. 447.

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Lib. 3.  Of Releases.  Sect. 447.

(4) And so it is if the tenant alien hanging the quittance, the release of the demandant to the tenant to the quittance is good, and yet be hath nothing in the land.

In time of vacation an annuity, that the personal ought to pay, may be released to the patron in respect of the privity; but a release to the ordinary only seenneth not good, because the annuity is temporal.

If a difflator make a lease for life, the difflator may release to him; for to such a release of a bare right there may be privity, as shall be laid hereafter. But if the difflator make a lease for years, the difflator cannot release to him, because he hath no estate of freehold. And yet in some case a right of freehold shall come in a chattell; as if a feme hath a right of garden to the garden in chivalry, and her right of freehold shall come in by the chattell, because the wer of dower doth lie against him, and the heir shall take advantage of it. And it is to be observed, that by the ancient maxime of the common law, a right of erring, or a chose in action, cannot be created or transferred as a stranger, and thereby is avoided great oppression, injustice and injustice. Nisi clausum, at nunc, seculari daretur vel perseruit, a lede non ruit; fol. 48 d.

And therefore well Litterus, that he to whom a release of a right is made must have a freehold. For the better understanding of transferring of naked rights to lands or tenements, either by release, feoffment, or otherwise, it is to be known, that there is jus proprietas, a right of ownership, jus possessorum, a right of tenants or possessor, and jus proprietatis et possessionis, a right both of property and possession; and this is antiently called jus duplicatum, of right duplicatus. For example, if a man be of the land, the difflator hath jus proprietatis, the difflator hath jus possessorum; and if the difflator release to the difflator, he hath jus proprietatis et possessionis; and if a man be of the land, the difflator hath jus proprietatis, and another by a meane title recover the land from him, the right of possession shall draw the naked right with it, and shall not reave a right to him to whom the release is made. For example, if the heir of the difflator being in by descent A. doth difflate him, the difflator releases to A. now hath A. the meere right to the land. But if the heir of the difflator enters into the land, and regresse the possession, that shall draw with it the meere right to the land, and shall not regresse the possession only, and leave the meere right in A. But by the reacquisition of the possession, the meere right is therewith vested in the heir of the difflator.

If the dower in talle diconcute in feus, now is the reversion of the donor turned to a naked right. If the donor release to the diconcute and die, and the issue in talle doth recover the land against the diconcute, he shall leave the reversion in the diconcute; for the issue in talle can recover but the estate talle only, and by consequene must leave the reversion in the diconcute, for the donor cannot have it against his release: but if the diconcute enter upon the heere of the difflator, and issue in feus, and the heir of the diconcutor recover the whole estate, that shall draw with it the meere right, and leave nothing in the possessour. Now the diversity. Another diversity is observable when the naked right is precedent before the acquisition of the possessour estate, for there the reacquisition of the possessour estate shall not draw with it the preceding right. If the dower in talle diconcute in feus, now is the reversion of the donor turned to a naked right. If the donor release to the diconcute and die, and the issue in talle doth recover the land against the diconcute, he shall leave the preceding right in the diconcute. So if a woman that hath right of dower at first die, then the meere right is vested in the issue, and the issue recover the land against her, yet shall be leave the right of dower in her.

Another diversity is to be noted, when the meere right is subsequent, and transferred by act in law; then, albeit the possession be recovered, yet that shall not draw the naked right with it, but shall leave it in him: as if the heir of the diconcutor be diconcute, and the diconcutor issue in feus, apparent of the diconcutor being of full age, and then the diconcute die, and the naked right succeed to him, and the heir of the diconcutor recover the land against him, yet deth be leave the naked right in the heir of the diconcutor. So if the diconcutation in talle issue in feus of full age, and tenant in talle die, and then the reversion recover the land against him, yet he leaveth the naked right in the issue. If the heir of the diconcutor be diconcute, and the diconcutor issue in feus, apparent of the diconcutor being of full age, and then the diconcutor die, and the naked right succeed to him, and the heir of the diconcutor recover the land against him, yet he leaveth the naked right in the issue. If the heir of the diconcutor be diconcute, and the diconcutor issue in feus, apparent of the diconcutor being of full age, and then the diconcutor die, and the naked right succeed to him, and the heir of the diconcutor recover the land against him, yet he leaveth the naked right in the issue.

(5) Thus may be divided, with respect to the diconcutor, into that bare, naked, possession which he acquires by the diconcute, and the estate by title which he heir acquires by the diconcute; and, with respect to the diconcutor, into that right of possession which he can recover by entry, and the bare right which he can only recover by dower.

Sect. 448.

Here it is a discharge in law for which the bond was made before in many places of freeholds in deed. This is known generally as a discharge in law, and the civil law in fact.

If a man levies a fine for conscience of debt and pays it, or a fine for conscience of debt in blood, whether it be a fine for the record of the bond, or the court does not hold the bond in law, then an exchange, the parties have neither freehold in deed, nor in law, before their entry; so upon a partition the freehold is not removed until an entry.

If a tenant for life by the agreement of the tenant in the reverent and yourself, and the reverent, he is held in law, so he is held in law, and before his entry. Upon entry with: in the view the freehold is voided before an entry.

If a man does not receivably and sell land by deed in writing and involved, the freehold in law does not pass freely. And so when use is exercised upon covenant upon good consideration.

If a tenant in a property being sold of lands in fee, can only be sold to a villein, and to hold the land in villeinage of him, the freehold in land is actually sold by the freehold and inheritance without any entry. But let us return to Lawton.

Sect. 449.

Item, en osainte case de releves de tout le droit, et
ment que cay a que le releve est fait et tirés en le francktenement en fait en leasy, aucun releve est fait en leasy. Si le releve est fait en leasy, sera releve en terre que il ad per pese for a un auter par terme de sa vie, tenant le reverence a leu, si le releve en son bien releve al diffuser al diffuser tout le droit, &c.

also, in some cases of releases of all the right, albeit (that) to whom the release is made hath nothing in the freehold in deed nor in law, yet the release is good enough. As if, if the diffuser letth the land which he hath by diffuser to another for terms of his life, saving the reverence to him, if the diffuser or his heir releave to the diffuser the right of all the right, &c., this

* ext added L. and M. and Rob.  +  &i; ext added L. and M. and Rob.

...release is good, because he is to whom the release is made, had in law a reversion at the time of the release made (1).

HERE Linlithgow adds a limitation to the next precedent Section, viz., that a release of all the right may be good to him in reversion, albeit he hath nothing in the freehold, because he hath an estate in him.

Tout le droit, &c. Or title, interest, demand, or the like; and so it is if he in the reversion hath an estate for life or in tail in reversion, as in the like case it appears in the next Section.

Sect. 450.

EN même le maner est, luy leas est fait a un bonne par terme de vie, le remaniand a un auter par terme de * auter vie, le remaniand a la tierce en le taile, le remaniand a le quart en fee, si un estranger que droit ad a la terre relia a tout son droit a af-cun de euz en le remaniand, tel re-lese est bonne, par ceo que chefe euz ad un remaniand en fait veufes en fey.

HERE is another limitation, that a release is good to him in the remainder, albeit he hath nothing in the freehold in possession, because he hath an estate in him, as hath been said. In both these limitations it is to be observed, that the estate which makes a man tenant to the princiæp, is said to be the freehold, as the estate of tenant for life, and not the reversion in fee.

Sect. 451.

MES si le tenant a terme de vie fait diśfisa, et puis enhy que ad droit (sientant le possession en le diśfisa) reliça a un de euz a que le remaniand fait fait tout son droit, est release est void, par ceo que il it avoir n un remaniand en fait al temps de release fait, forsque tantoulement un droit del remaniand.

BUT if the tenant for term of life be diśfisa, and afterwards he that hath right (the possession being in the diśfisa) release to one of them to whom the remain-daer was made all his right, this release is void, because he had not a remainder in deed at the time of the release made, but only a right of a remainder.

Forsqué tantoulement un droit del remaniand. For a release of a right to one that hath for a bare right regularity is void; for, in Linlithgow hath before add, line 11; Vide sect. 450 to whom a release is made of a bare right in lands and tenements, must have either a freehold in deed or in law in possession, or a estate in remainder or reversion in fee or fee tail, or life.

Sect. *

(1) Releases may enter in four manner of ways. 1st, Per auter le dehant, where a person is diśfisa, and he releases to the diśfisa his bunk or office. 2nd, Per auter le dehant, where when two or more are held by a joint title of the same estate, as he beyn-trall, or by deuixit, as jointheirs, or co-heirs, and one of them releases to the other, this commis per auter le dehant, 3rd, Per Pekers, in the possession in reversion. see Sect. 454. 4th, Per Pekers, in the possession in remainder. This release is void to the antient, his estate, and to be void to an entry and feoffament, and to remain to a grant and attement, &c., per enrightement, where the releasor cannot loose the thing per auter le dehant, yet the release shall come by was of a diśfisa indictment against all manner of peculies, so when the lord grants the beneficry to his tenant, such release absolutely stragæch the rese, &c., although the releasor is only tenant for life. Ant. 153. b. and fee poll. 173. b.
By this it appeareth, that as a release made of a right to him in reversion or remainder, shall aid and benefit him that hath the particular estate for yeares, life, or ciete taile, so a release of a right made to a particular tenant for life, or in taile, shall aid and benefit him or them in the remainder.

If two tenants in common of land grant a rent charge of 40s. out of the same to one in fee, and the grantee release to one of them, this shall extinguish but twentie shillings, for that the grant in judgement of law was fee-vicell. (1) So it is if two men be feoffed of feoffell acres, and grant a rent at feupee. But there is a diversite betweene feoffell estates in feoffell lands, and feoffell estates in one land; for if one be tenant for life of lands, the reversion in fee over to another, if they twojoyne in a grant of a rent out of the lands, the grantee releaseth either to him in the reversion, or to tenant for life, the whole rent is extinguished, for it is but one rent, and illiueth out of both estates, and so note the diversities. (2)

Si le tenant ad le fait en son poigne a pleader. And so it is in both cases; for albeit he in the reversion or remainder is a stranger to the deed, when the release is made to the tenant, and the tenant for life or in taile is a stranger to the deed, when the release is made to him in reversion or remainder, yet fecling they are privie in ciete, none of them in pleading shall take benefit thereof, without shewing the fame in court, which is worthy to be observed.

S'ils eco poient monstre. The one cannot plead the release made to the other without shewing of it, for that they are privie in ciete, as hath beene said. The residue of these two Sections need no explication.

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(1) If the grant a rent-charge of 40s. in a moiety amount to a rent-charge of 80s., at two grants for otherwise non est cœlum. When two tenants in common grant a rent, that is, several estates in one land, and yet they are several grants, therefore quere of this diversitie, Pls. Quæ, pl. 315. etnoc. Lord Nat. MSS.

(2) For Planch in his Report 315. if tenant for life grants rent, and the greater for, besides the reversion, the rent remains during the life of the tenant for life. Lord Nat. MSS.
Of Releases.

Sect. 454.

Also, if there be lord and tenant, and the tenant be defeised, and the lord releaseth to the defeise all the right which he hath in the feignior or in the land, this release is good, and the feignior is extinct: and this is by reason of the privitie which is betweene the lord and the defeise. For if the beasts of the defeise be taken, and of them the defeise sueth a replevin against the lord, hee shall compel the lord to avow upon him: for if hee avow upon the defeise, then upon the matter shown the avowrie shall abate, for the defeise is tenant in him in right and in law. (1) Hereupon may be collected and observed two diversities: first, betweene a feignior or rent servise, and a rent charge: for a feignior or rent servise may be releasfed and extinguishe to him that hath but a bare right in the land, and the reason hereof is, in respect of the privitie betwene the lord and the tenant in right; for he is not only as tenant to the avowrie, but if hee die his heir within age, hee shall bee in ward; and if of full age, hee shall pay relevse; and if he die without heir, the land shall eschew. But there is no such privitie in case of a rent charge, for there the charge only lieth upon the land.

The second diversity is betwene a feignior and a bare right to land; for a releasfe of a bare right to land to one that hath but a bare right is void, as hath beene said. But here in the case of our author, a releasfe of a feignior to him that hath but a right, is good to extinguishe the feignior.

None, a feignior, rent, or rights, either in possessio, or in futuro, may be released five times of years, and the first three without any privitie; First, to the tenant of the freehold in deed or in law.  

(2) Vid. Sect. 451.

Per caufe de privitie, &c. See for this word (privitie), Sect. 461.

This is regularly true; but if the lord hath accepted services of the defeise, then the defeise cannot enforce the lord to avow upon him, though his beasts be taken, &c. (3)

If a man hath title to have a writ of ejectment, if he accept homagen or faculte of the tenant, he is barred of his writ of ejectment; but if he accept rent of the tenant, that is no bar to him for it may be receied by the hands of a layliff. (4)  But here be hold, that if there be lord and tenant, and the tenant be defeised, and the defeise die without heir, the lord accepts rent by the hands of the defeise, this is no barre to him. Contrarie it is, if he avow for the rent in court of record, or if he take a corporall service, as homagen or faculte, for the defeise is in by wrong; but if the lord accept the rent by the hands of the heir of the defeise, or of his bo.der, because they be in by title, this shall barre him of his eikement, which is to

Sect. 455.

(1) Here the releasfe operateth but in a case of a cumplishment. See vell. 279 b.

(2) But the opinion of the 23. E. 4. 9. comes to the contrary, because when the tenant pleaseth the defeise, to compel the lord to avow upon him, it is finne that the lord, by his own art of acceptance, should maintain his security, and deliver the feald controles.

(3) Edin. 1754. 1 Bull. Abs. 216 b.
Lib. 3. 

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(Rib. 244.)

Lib. 9. fol. 58. Buchan's cade.
Lib. 9. fol. 82. in cade d'averm.

49. E. 3. 15. 6. 7. 4. 21. H.
(Am. 264.)

Section 455.

ITEM, if terre soit done a un
dome en tait, referuant al doner
et a ses heires un certaine rent, si
de doene fait diifficet, et puis le
donor relevat al donee et a ses
heires tant le droit que il avoir
en la terre, et puis le donee
enter en la terre sur le diifferet;
ens cete le rent est alle, par ce
que le diifferet al temps de relese,
fait, fait tenant en droit et en
la ley al donor, et aoverwir a fin
force covent de faire faire sur ley
per le donor pour le rent adherer,
&c. Mis uncere rien de droit
de terre, seilicet, de le droit
de le revercion, * pashier per tiel
relese, pur ceo que le donee a que
le relese est fait, adonque n'avoit
riens en la terre forique tante-
folentem un droit, et isflet le
droit del terre ne pashir + adon-
quies pashier al donee per tiel
relese.

ALSO, if land be given to a man
in tait, referring to the donor
and to his heirs a certain rent, if
the donee be diffused, and after
the donor release to the donee
and his heirs all the right which
he had in the land, and after the
donee enter into the land upon
the diisser; in this case the rent
is gone, for that the diisser at
the time of the release made,
was tenant in right and in law to
the donor, and the avowire of
force ought to be made upon him
by the donor for the rent behind,
&c. But yet nothing of the right
of the lands, (seilicet) of the re-
verion, shall pass by such relefe,
for that the donee to whom the
relese is made, then had nothing
in the land but only a right, and
so the right of the land could not
then pass to the donee by such
relese.

* adeuoir ne adde L. et M. et Rob.
† adeuoir ne in L. et M.

See the following page. Gills. Diffr. 164. Lord Raym. 257.

(1) That is, of necessery.


**Lib. 3.**

**Sect. 456, 457.**

**Of Releases.**

Si le doner fait diffcuile, &c. This is evident by that which hath been said. But thence it is evident that the donee makes a feoffment in fee, and the donor releases unto him and his heirs all the right in the land. This shall continue with the rent, because the lord must annul upon him, and yet the tenant in tail after the feoffment hath no right in the land. But the reason is in respect of the priority, and that the [m] donor is by necessity compellable to avert upon him only; for if he should annul upon the disclaimer, then it should appear of his own free-will that the reversion wheresoever the rent is incident should be out of him, and consequently the avertor should abide; and so was it in [s] reference to the Court of Common Pleas in the case of Thomas Wan's case, which I heard and observed. And Likewise in this case, that in case of the difficult of free force, the avertor must be made upon the donee.

Uncore riens de droit, &c. de reverison, &c. Here the diversities are obvious between the rent service and a bare right to the land appareth.

**Sect. 456.**

EN mesme le manner est, si le tenant audit a un pur terme de vie, refervant al lefser et a ses heirs certaine rent, si le lefser fait difficulite, et puit lefser relefla al lefser et a ses heirs tout le droit qui il ad en la terre, et apres le lefser enter, comand que en cest cas le rent est extinct, encore rien de droit de reverison possiera, cautd quz supr.

IN the same manner it is, if a lease be made to one for a term of life, referring to the lessor and to his heirs a certain rent, if the lessor be difficult, and after the lessor releases to the lessee and to his heirs all the right which he hath in the land, and after the lessee enters, command that in this case the rent is extinct, yet nothing of the right of the reversion shall pass, causa quæ supra.

**HEREBY** the diversities are made appear between a release of a rent service out of land, and a release of right to land, in this Section.

**Sect. 457.**

MES si fuit veray feignior et veray tenant, et le tenant fait un feoffment en fee, lequel feoffe ne usque devient tenant al feignior, † si le feignior relis a l feoffor tout son droit, &c. cest relefs est en tout valid, pour ço que le feoffor ad nil droit en la terre, et il n'est tenant en droit al

BUT if there be very lord and very tenant, and the tenant maketh a feoffment in fee, the which seoffee doth ever become tenant to the lord, if the lord releas to the seoffor all his right, &c. this release is altogether void, because the seoffor hath no right in the land, and he is not tenant in right to the

VERAF. feignior et veray tenant.

This is to be understood of a lord in fee simple, and of a tenant of free reilance.

There be two manner of aversions for the rents and services, &c. of a seoffor seoffor, in the case here put, 3 seoffor seoffor seoffor in serlond præsidio, as where a lease for life, or a life in tail here made, the remainder in fee. Upon one an upon his tenant by the manner omitting veros, and this is when the lord hath a particular estate in the kingdome, and so shall the donor upon

† vide Add. 16. and M. and Rob.

‡ vide Add. 16. and M. and Rob.

The lord, but only tenant, as to make the averour, and hee shall never compel the lord to avow him, for the lord shall avow upon the sefice if hee will.

Here appears the diversity between a tenant in tail, and a tenant in fee simple; for although a tenant in tail make a seffice in fee, yet the right of the seigneur, and shall defend to the seffice in tail. But when the tenant in fee simple make a seffice in fee, no right at all remains of his estate, but the whole is transferred to the seffice.

Alfo the lord is not compellable in that case to avow upon the seffice: but if he will, as filio him here, he may avow on the seffice; but if he is not, as hath beene said, in case of tenant in tail.

Note a diversity between actions and affs which concern the right, and actions and affs which concern the possession only. For a writ of customes and servies both not against the seffice, nor a releafe to him shall extingushe the seignior. So if a releafe be made, an affs shall not lie against the seffice, and he that makes the releafe, because the seffice is tenant, and in affs, the forfittuage incorpore shall be avoided. For there actions and affs concern the right; but of a feft and an averour which concern the possession, it is otherwise.

And if the lord releafe to the seffice, this is good between them, as to the possession and discharge of the seignior, but the seffice shall not take benefice of it, for that, as hath beene said, it extendeth not to the seffice. But the seffice shall plead a releafe to the seffice, for thereby the seignior is extinct; as if lessee for life death wale, and grant over his estate, and the leffeor releafe to the grantor, in an action of waste against the leffeor, he shall plead the releafe, and yet he hath nothing in the land. And so is valid taille tenant in dower by the custom in the like case, and the vouches, and the tenant in a seffice after a seffice made. And in a case of former entailments.

Le fief de seigneur designe tenant. Note here an excellent point of learning, as if there be lord and tenant, and the rent is behind by divers years, and the tenant make a seffice in fee, if the lord accept the service or rent of the seffice due in his time, he shall lose the seffice due in the time of the seffice; for after such acceptance he shall not avow upon the seffice, nor upon the seffice for the seffices incurred in the time of the seffice. But in that case if the seffice dieth, although the lord accept the rent or service by the hand of the seffice due in his time, he shall lose the seffice, for now the law compellth him to avow upon the seffice, and that which the law compellth him unto, shall not prejudice him.

So it is, and for the same reason, if there be lord, seignior, and tenant, and the rent due by the morter is behind, and after the tenant fore-vouer the morter, and the lord receive the services of the morter which issue out of the tenancy, he shall not be barred of the seffices which issued out of the morter, and he that rent be behind, and the tenant dieth, the acceptance of the services of the morter by the hand of the heir shall not barre him of the seffices; for in these cases albeit the persons be altered, yet the lord doth accept the services of the tenant which only ought to be done by them. But as long as the seffice liveth, the lord shall not be compelled to avow upon the seffice, unleffe he gives the lord notice, and tender unto him all the seffices.

But now by the statute the lord may avow upon the lands to holden, as in lands within his fee or seignior, without running of any person certaine to be tenant of the same, and without making of any averour upon any person certaine, as hath beene said, which hath much altered the common law in the coheirs thereof, for the benefit and safety of the lord.

But yet their cases are necessitie to be knowne (for which purpose I have aldeed them), for that the lord may avow all at the common law if he will.

Sect. 458.

1. On the occasion of the right of the entail in the tenant in tail after a seffice made by him, for the serve of lord Sheffield to Radcliffe, ibid. 311: and for Duncombe to Wingfield, ibid. 312.

2. For the lord could not introduce the heir into the seffice contrary to the express limitation of the tenant. Gilbert, Tom. 47.

3. In the absence of one party, the landlord hires his wights of skin against the full leffe, but he may still maintain an action of covenant against him. 1. Brown. cap. 247. 2. Saund. 304.
Sect. 458.

**AUTERMENT** est lou le veryer tenant est diisse, comme en
la cas avancit ; car si le veryer tenant que est diisse, teigne del
soigneur por service de chivoter
et nourri (sen beire offant deis
age), le soigneur avera et sfera
le garde de boire, et sffert
al my le gardel del soifor que fis
le soifon en fee, &c. sffit il eit
grand diversité entre les deux
cafés, &c.

**OTHERWISE it is where the very tenant is diisfed, as in the
cafe aforesaid; for if the very te-
nant who is diisfed, hold of the
lord by knights service and dieth
(heis heir being within age), the
lord shall have and seize the ward-
ship of the heir, and so shall he
not have the ward of the soifor
that made the soifement in fee,
&c. so there is a great diversiti
between the two cafes.

Of this sufficient hath beene saide before.

Sect. 459.

**ITEM, si un home
dent a un auter
son terre por terme
de ans, si le leffor re-
sfira al leffor toute son
droit, &c. devant que
le leffor avoit enter en
mynue le terre por force
de minee le haut, tel
relias eit void, par cee
que le leffor n'avoit
posffion en la terre
al temps del releas,
mas tantque-
ment son droit d'a-
sfer mynue la terre
por force de minee le
haut. Mes si le leffor
erent en mynue la ter-
en, et est eit posffion
por force de minee le
haut, duque tieel rel-
los ffit a lys per le
soifor, ou per son
boire, est a sufficient a
lyp por cause del privit-
que por force del
lof eit porvenir cas, &c.

**ALSO, if a man let-
teth to another
his land for term of
years, if the lefhor re-
safes to the lefhor all
his right, &c. before
that the lefhor had en-
ter into the same
land by force of the
same leafe, such re-
safes is void, for that
the lefhor had not pos-
session in the land at
the time of the releaf
made, but only a right
to have the same land
by force of the leafe.
But if the lefhor enter into
the land, and hath
possession of it by
force of the said leafe,
such releafe made
to him by the soifor,
or by his heire, is suf-
cient to him by rea-
son of the privitie
which by force of the
leafe is between them,
&c.**

**DEVANT que le
leffor avoit enter,**
&c. For before entry the
lefhor hath but interre ter-
mi, an interest of a remin-
que, and therefore
a releafe which ensue by way of
enlarging of an effaet cannot
work without a posffion, (1)
for before posffion there is no
reversion; and yet if a tenant
for twenty yeares in posffion
make a releafe to B. for fives
years, and B. enter, a releafe
to the first lefhor is good, for he
had an actual posffion, and
the posffion of his lefhor is his
posffion. And so it is if a man
make a releafe for yeares, the
remader for yeares, and the
first leffor doth enter, a releafe
to him in the remader for
yeares is good to enlarg his
effe. (2)

But if a man make a releafe
for yeares to begine preterem-
th, referring a rent, if before
the lefhor did entere the lefhor
to releafe allris right that he
had in the land, albeit this
releafe cannot enlarg his
effe, yet it shall in respect of
the privy extinguit the
rent. And in it is if a relea-
se be made to beginne at Michael-
mas, referring a rent, and be-
fore the day the releafe rele-
se all the right that be hath in
the land, this cannot enuer to
enlarge

(1) On releafes which opera by enlargement, for pol. 257. a.
(2) But he was to be understood of a releafe in common, &c. for it be so framed as to be a duplus and sole under the fixture, the pos-
session is commonly exercised in the lefhor, in that moorthy is necessit.
(3) By this phrase it appears, that when he Edmund Coke observes a few lines below, that a releafe which ensue by enlargment
cannot work without a posffion, must be understood to mean, that an actual fixate in posffion is necessit, but that a relea-
sed folfatage, for that releafe to open apon. By comparing this with what is said in sect. 457, of the operation of a leas
and releafe, it will be seen, that not only effe in posffion, but all rents in remainder and reversion, and all other incorporat
hereditaments, may be efficaciously granted and conveyed by leafe and releafe: but it is an inaccuracy to say, that the releafes, in thic+
use in the act of posffion of the hereditaments; the right expression is, that they are alwys relea or in him, by virtue of the lack of
posffion, until the fixture.
Lib. 3. Cap. 8. Of Releaves.

Of Releaves. Sect. 460.


By these two Sections is to be observed, a diversity between a tenant in will, and a tenant in sufferance; for a release to a tenant in will is good, because he holds there is a possession with a privite; but a release to a tenant in sufferance is void, because he has no possession without privite. As it lies for years hold over his terms, &c. a release to him is void, for there is no privite between them, and the books here cited ill understood, for it is to be understood of a tenant at sufferance.

Sed contrarium tenetur, &c. This is of a new addition, and the books here cited ill understood, for it is to be understood of a tenant at sufferance.

EN meisme le mener eft, comme il femble, ou leafe eft fait a un bone a tener de le leffer a fa volonte, perforce de quel has le leffe eft pefefiion: fi le leffer en efs efe fait un relefe al leffe de tout fon droit, &c. eft relefe eft affer: bien par le privite qu'il re- renter en: ses en vain ferre de faire eflate per un livree de feffion a un auteur, lez il ad pefefiion de mefmes les ftemens per le has de mefmes efe devant, &c. Sed contrarium tenetur, P. 2. Ed. 4, per toutes les juyftices.

\[\text{\footnotesize *(1) A tenant in will is he who enters and enjoys the land by the express or implied consent of the owner, without there being any obligation on the part either of the tenant or lessor to convey it for any consideration or otherwise. A tenant by sufferance is he who has entered and derived possession by title, continues the possession, after his title is ended, by the lessor of the lessor. The former is in the name of the owner of the land, the latter is a privite between them. A tenant by sufferance is in only by the nature of the tenancy, but that there is no privite between them. Both these classes differ from that of a tenant from year to year, the tenant of which title does not determine at the end of any year, but after a new year is begun, the tenure cannot be determined either in the lessor or lessee till the end of the year, &c. See 1. Ed. 4. 3. Sect. 460. If a premises liability is less, and the tenant expires, the lease still is notified of the expiration of the term, and the lessor then enters on the lessor by common notice, with the doubt ensue under the 1. Ed. 4. Sect. 2. 1. in which case there must be a previous demand in writing. When the tenant holds for will, the modern determinations are, that there must be a previous notice; but this notice varies according to the nature of the land, and the nature of the investments in lease.}\]
Of Receipts.

SECT. 461.

But where a man of his own head occupieth lands or tenements at the will of him which hath the freehold, and such occupier claimeth nothing but at will, &c. if he which hath the freehold will release all his right to the occupier, &c. this release is void, because there is no privy between them by the lease made to the occupier, nor by other manner, &c.

The words to the effect:—

Notwithstanding a particular estate in land by the act of the parties, for if the garden hold over, he is an abbot, because his interest came by act in law.

No privy. Privacy is a word common abroad in the English as to the French, and in the understanding of the common law is embraceful.

As privies in estate, whereas Lisburne here speaks; as between the donor and donee, lessor and lessee, which privacy is ever immediate.

Privies in blood, as the heirs to the ancestor, or between coparencers, &c.

Privies in representation, &c. to the tenant.

And earthly, privies in tenure, as the land and tenant, &c. which may be reduced to two general heads, privies in deed, and privies in law.

SECT. 462, 463.

Thus, if a man enfeoff another man of his land upon confidence, et al intent to performo la dotation, and the seffor occupieth the same land at the will of his seffors, and after the seffors release by their deed to their seffors all their right, &c. this hath become a question if such release be good or no. And some have said, that

Also, if a man enfeoff other men of his land upon confidence, and to the intent to perform the last will, and the seffor occupieth the same land at the will of his seffors, and after the seffors release by their deed to their seffors all their right, &c. this hath become a question if such release be good or no. And some have said, that

Here is a question mov'd, and the reason of both sides thereof, and as it hath been observed, the latter opinion is the better, being Lisburne's own opinion.

Il senn a entendu

Per le leg gis le seffor doit maintenir occupieth la terre a volumo des seffors. For intenstions of law mentioned by our authore, for the Section in the margin.

Here is to be observed the intention of law, that when a feu is made to a future use, as to the performance of his last will, the seffors

Not added I. and M. and Rol.
foules shall be feited to the use of the feoffor and of his heirs in the mean time.

If ye enjoin leges cipians at iure regimine.

And reason would that the feoffment is made with- out consent, and the feoffor hath not dispised the profits in the mean time, that by consent, and intention of law the feoffor ought to occupy the cause in the mean time. And so it is when the feoffor dispises the profits for a particular time in possession, the use of the inheritance shall be to the feoffor and his heirs, as a thing not dispised of; wherein it is to be observed, that lands and tenements conveyed upon conditions, uses, and trusts, are to be ruled and decided, if such questions grow upon the conditions, uses or trusts, by the judges of the law; for that it appeareth by this and the next Section, they are within the intention and consideration of the lawes of the realm (1).

And it is to be observed (as hath been faid) that there is a diversite between a feoffment of lands at this day upon confidence, or to the intent to perform his lay will, and a feoffment to the use of such person and perfon, and of such estate and disability, as he shall appoint by his lay will: for, in the first case, the land paffeth by the will, and not by the feoffment; for after the feoffment the feoffor was feited in the same, as he was before: but in the latter case, the will purifying his power is but a direction of the use of the feoffment, and the estate paff by execution of the uses, which were rale upon the feoffment; but in both cases the feoffees are feited to the use of the feoffor and his heirs in the mean time: and all that much more concerning this matter hath been adjudged.

Note, trust is rale either by transmutation of the estate, as it is, seffor, common recovering of the same, or change of the sameestate, by the course of the time. And also in the first and second parts of the seffor, indented and intollled, by or covenanted upon lawful consideration, whereas you may read plentifully in my Reports.

A feoff to the use of A. and his heirs, before the Statute of 25. H. 8, for money bargained and sold, and the land to C an his heirs, who hath not notice of the former seffor, yet no use paffeth by this bargaine and sale; for there can be no uses in off, of one and the same land; and so there is no transmutation of possession by the covenante, the former use can neithe be extinct nor altered. And if there could be two or more of one and the same land, then could not

(1) Many notes have been made, in the foregoing notes, to this part of the work, for some observations on conveyances at common law, and those which derive their effect from the statute of uses. It appeared advisable to collect these into one or two consistent notes, that the difference between the two sorts of conveyance might appear in a stronger light; and to prevent a confusion of frequently repeating the same general principles of illustration, which either would have been introduced on every occasion, or if any point of this nature formed to require an explanation. On the same ground it formed advisable to enumerate some notabilia which otherwise would have had a place in a fabulatious part of the second, seffor, and grants: the second chafe made use of the common law for transferring property, which can be given in the common law, without being of a considerable nature, as the same is a conveyance of corporeal incumbrances, by delivery of the possession upon or within view of the feoffment in conveyance. The delivery of the possession made on or within view of the land, that the proper import of the word feoffment is the grant of a use. It came afterwards to mean, a grant with liberty of issue of a free inheritance to a man and his heirs; more respect being had to the perpetuity, than the land's issue of the estate granted. In many cases, after the Conquest, charges of feoffment were various in point of form. In the time of Edward I, the lay began to be given upon a more uniform style. The more ancient of them generally run with the words de meo, et meo deo aut donario. It was not till a later period that feoffment came into use. The more ancient seffors were usually made in consideration of a way, or lay, the homage and feite or feoffment of the seffor, as he was called in the conveyance, and the land conveyed to hold of the chief lords of the fee, without the words pro hominum or sefforion. Sir Edward Coke mentions in page 6. a note that there were eight necessary parts in a sefforment of a fee. The first of these was the grant; and so we may find in the old conveyances, the land conveyed to the seffor from the ancestor, by or by the grant of the property of the ancient land-lord, of not being desirous from the kindness, the ancient sefforments were often expressed to be made with the seft of the seffor's wife, her heir or his heirs. In ancient charters there was a particular warranty, in that, the place was mortgaged there. The party was often added to it, and sometimes a clause, that if the seffor's title was extinguished, he should give others of the same kind. Sometimes their clauses extended to a feudal war, and sometimes the feudal oblige himself, if he should make default in ensuring the sefted lands, to make restitution to the seftor. The proper limitation of a seftorment is a man and his heirs, but seftorments were often made of conditional uses (as of estate in fee), and they were made to be used of life estates, to which may be added, seftorments of estate given in future times, used to secure the seftor of the lands: this is what the lawyers called underwritten. It was often made by feftorment of tradition, but was always made upon us within view of the lands. When the king made a seftorment, he fined his way to the seftor, or other persons to deliver it: after great men old the fine. This gave rise to powers of attorney. (See the preface to Mr. Minshew's Familiar 1.)
of Releases.

Section 464.

Another cause, they allege, that if such land be worth forty furlongs a year, &c., then such fief or fief shall be sworn in asfe and other enquefts in pleas reals, and also in pleas personal, of what great power the plaintiff will counter, &c. Et cetera parietur de lege terrae. Ergo, cetera parietur de grandu causa. Et la causa est, quod a legem vestris suis feffores et feffori habeant occupari, &c., et prender et expositionem fuerint usque in extremum, &c., hoc est, in extremum, et revocare, &c., sic fiet ille deextremum. Ergo, mox legem est quod privatoe personae proxime et fronte seffores et feffori unum confidere.

9 H. 1, fol. 18d.
9 H. 1, fol. 19a.
9 H. 2, fol. 5.
9 H. 2, fol. 8d.
10 H. 2, fol. 11.
11 H. 2, fol. 17.
12 H. 2, fol. 18.
17. Eliz. c. 6.
17. H. 7, fol. 5.
24. H. 7, fol. 4d.
28. H. 6, cap. 3.
31. H. 6, cap. 4.
37. H. 6, cap. 5.
40. H. 6, cap. 6.
46. H. 6, cap. 7.
52. H. 6, cap. 11.
56. H. 6, cap. 12.
60. H. 6, cap. 13.
71. H. 6, cap. 15.
76. H. 6, cap. 16.
81. H. 6, cap. 17.
86. H. 6, cap. 18.
91. H. 6, cap. 19.
96. H. 6, cap. 20.
101. H. 6, cap. 21.
106. H. 6, cap. 22.
111. H. 6, cap. 23.
121. H. 6, cap. 25.
131. H. 6, cap. 27.
136. H. 6, cap. 28.
141. H. 6, cap. 29.
146. H. 6, cap. 30.
151. H. 6, cap. 31.
156. H. 6, cap. 32.
161. H. 6, cap. 33.
166. H. 6, cap. 34.
171. H. 6, cap. 35.
176. H. 6, cap. 36.
181. H. 6, cap. 37.
186. H. 6, cap. 38.
191. H. 6, cap. 39.
196. H. 6, cap. 40.
201. H. 6, cap. 41.
206. H. 6, cap. 42.
211. H. 6, cap. 43.
216. H. 6, cap. 44.
221. H. 6, cap. 45.
226. H. 6, cap. 46.
231. H. 6, cap. 47.
236. H. 6, cap. 48.
241. H. 6, cap. 49.
246. H. 6, cap. 50.
251. H. 6, cap. 51.
256. H. 6, cap. 52.
261. H. 6, cap. 53.
266. H. 6, cap. 54.
271. H. 6, cap. 55.
276. H. 6, cap. 56.
281. H. 6, cap. 57.
286. H. 6, cap. 58.
291. H. 6, cap. 59.
296. H. 6, cap. 60.
301. H. 6, cap. 61.
306. H. 6, cap. 62.
311. H. 6, cap. 63.
316. H. 6, cap. 64.
321. H. 6, cap. 65.
326. H. 6, cap. 66.
331. H. 6, cap. 67.
336. H. 6, cap. 68.
341. H. 6, cap. 69.
346. H. 6, cap. 70.
351. H. 6, cap. 71.
356. H. 6, cap. 72.
361. H. 6, cap. 73.
366. H. 6, cap. 74.
371. H. 6, cap. 75.
376. H. 6, cap. 76.
381. H. 6, cap. 77.
386. H. 6, cap. 78.
391. H. 6, cap. 79.
396. H. 6, cap. 80.
401. H. 6, cap. 81.
406. H. 6, cap. 82.
411. H. 6, cap. 83.
416. H. 6, cap. 84.
421. H. 6, cap. 85.
426. H. 6, cap. 86.
431. H. 6, cap. 87.
436. H. 6, cap. 88.
441. H. 6, cap. 89.
446. H. 6, cap. 90.
451. H. 6, cap. 91.
456. H. 6, cap. 92.
461. H. 6, cap. 93.
466. H. 6, cap. 94.
471. H. 6, cap. 95.
476. H. 6, cap. 96.
481. H. 6, cap. 97.
486. H. 6, cap. 98.
491. H. 6, cap. 99.
496. H. 6, cap. 100.
506. H. 6, cap. 102.
511. H. 6, cap. 103.
516. H. 6, cap. 104.
521. H. 6, cap. 105.
526. H. 6, cap. 106.
531. H. 6, cap. 107.
536. H. 6, cap. 108.
541. H. 6, cap. 109.
546. H. 6, cap. 110.
551. H. 6, cap. 111.
Lib. 3.

Cap. 8.

Of Relaxes.

Sec. 465.

... for which causes they have said, that such relaxes made by suchfoes upon confidence to their... to his heirs, &c. so occupying the lands, shall be good enough; and this is the better opinion, as it is feemeth.

Quadre, for this feemeth no law at all.

Est coe ope per common ley.

Here three things are to be observed. First, that the furtult construction of a foest is by the rule and reason of the common law. Secondly, that such as were at the common law. Thirdly, that now facing the feature [27. 1.]

Sec. 477.

Cap. 12.

b. of &c. Sec. 10.

Majo la ley done pricitive, &c.

Hereof it followeth, that when the law gives to any man any estate or poëtton, the law giveth also a pricitive and other necessaries to the same: and Libra here taketh it.

Sec. 8.

b. 68. 6. 2. 3.

Majo la ley done pricitive, &c.

Hereof it followeth, that when the law gives to any man any estate or poëtton, the law giveth also a pricitive and other necessaries to the same: and Libra here taketh it.

Sec. 465.

IT is in a certain rule, that when a relieve doth cause by way of enlarging of an eate, that there must be a privitie of estate, as between leffe and leffe, lorne and lorne.

Sec. 456.

It is certain, that when a relieve doth cause by way of enlarging of an estate, that there must be a privitie of estate, as between leffe and leffe, lorne and lorne.

Sec. 456.

I.T. E. M. relaxes... enfealty, that when a relieve doth cause by way of enlarging of an estate, that there must be a privitie of estate, as between leffe and leffe, lorne and lorne.
Of Releases.

Section 465.

Of Releases.

Lib. 3.

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of a lease is made. (1) As if I let certain land to one or for terms of years, by force whereof he is in possession, and after I release to him all the right which I have in the land without putting any more words in the deed, and deliver to him the deed, then hath he an estate but for terms of his life. And the reason is, for that when the releasor or remainderman is in a man who will by his release inlarge the estate of the tenant, &c. he shall have no greater estate, but in such manner and forme as if such lefсор were seised in fee, and by his deed will make an estate to one in a certain forme, and deliver to him seisin by force of the same deed: if in such deed of seise- ment there be not any word of inheritance, then he hath but an estate for life; and so it is in all releases made by those in the revision or in the remainder. For if I let land to a man for term of his life, and after I release to him all my right without more laying in the case, his estate is not

leffe inaketh a lease for years, and after A, releaseth to the leffe for years, and his heires, this releasee is void (Pol. 266. 4) to enlarge the estate, because there is no privy between A, and the leffe for years. If a man make a lease for twenty years, and the leffe (Ant. 235. 8) make a lease for ten years, and if the release doth release to the second leffe, and his heires, this release is void for the cause aforesaid.

For the same cause, if the done in take a lease for his own use, he will take the donor release to the leffe and his heires, this release is void to enlarge the estate.

And as privy is necessarie in this case, so privy only is not insufficient. As if an (Ant. 164. 2. Pol. 63. 9.) infant make a lease for life, and the leffe granteth over his estate with warranty, the infant at full age bringeth a deminuit infra atrodes, the tenant woucheth his grantor, who entereth into warranty, the demandant releaseth to him and his heires; there is privy in law, and a tenance in futuroposita of law; and yet because he is relater, he cannot have an estate, it can not ensue to him by way of enlarging; for how can his estate be enlarged, that hath not any.

If a tenant by the courte- fey grant over his estate, yet he be in tenant as to an action of waste, attorney, &c. and yet a release to him and his heires cannot ensue to enlarge his estate that hath no estate at all.

But if a man make a lease for years, the remainder for life, a releaseth by the lefсор to the leffe for years, and to his heires, for good, for that he built both a privy and an estate; and the release allo to him in the conveyance for life and his heires, is good in all.

If I grant the revocation of my tenant for life to another for life, now shall I not have an action of waste, &c. but if I releaseth to the grante for life, and his heires, now here (Ant. 239. 2.) hath

(1) Here Littleton treats of releases which operate by enlargement of the estate of the releasor.

(2) If the title of the land intended to be releaseth should be a privy between him and the releasor, and that the parties should have title to a fee simple.

(3) Hence a tenant by the courte fey, or forestry, is not capable of a release that is to operate by enlargement. But a tenant in dower or by the courte fey, as they have the immunity of possession, and privy of the person who has not a seisin in the land, shall have power to make a releaseth.

(4) T老人 on p. 262. and (5) Bull. Tit.

(6) In case no person is limited to an action of waste, but he who has an estate immediate in remainder or reversion, expectant on the estate of the person comming waste.

(7) Note ante, p. 199.

§ 1. If added in L. and M. and Rob.


§ 3. added in L. and M. and Rob.

§ 4. added in L. and M. and Rob.

(1) have been discussed, and have totally imperilled that notorious and public mode of transferring property, which the common law required, and the statute intended to reestablish, and many modifications or limitations of real property have been allowed by the common law. It did not admit any attempt will be made to give the reader a general view of the points. by some observa- tions. First, on the nature of the estates of the feoffor and the escheat quit rent, since the statute of uses. Secondly, on the limitation and modification of landed property unknown in the common law, which has been introduced under the statute of uses. Fifthly, on uses not executed by the feoffor. It is to be premised, that what is here said of a fee simple, in equal to be understood of a salary, without reversion, who finds fee simple to affect by the statute of uses. Fourthly, that the statute of uses has been in some measure by the statute of escheats and the statute of uses. Fifthly, on uses not executed by the feoffor. It is to be premised, that what is here said of a fee simple, in equal to be understood of a salary, without reversion, who finds fee simple to affect by the statute of uses. Fourthly, that the statute of uses has been in some measure by the statute of uses.
Lib. 3. Cap. 8. Sect. 66.

Of Releases.

hath the fee simple, and shall possess the whole done after (1).

It is further to be observed, that a releasor that enures by way of enlargement of the estate, there is not only required privy, as hath been said, and an estate also, but sufficient words in law to cause or create a new estate. If a man make a lease to A. for term of the life of B. and after release to A. all his right in the land by this, A. hath an estate for term of his own life, for a lease for term of his own life is higher in judgment of law, than an estate for term of another man's life.

If a term covert be tenant for life, a release to the husband and his heirs is good, for there is both privy and an estate in the husband, whereupon the release may sufficiently ensure by way of enlargement (a); for by the emmancipation he gains a freedom in his wife's right.

Tout le droit. Vid. Sect. 650.

(a) Loi 309, 332, Art. 193 b.

(b) Esp. Dit. 259, 10, Eliz. Sexons Lib. ib. fol. 60, 69. 11. 6. 41. 19. 1. 2. 4. 6. 5. 6. 2.

(c) See before in the chapter of Fee simple.

(d) Esp. fol. 41. 46. 6. 3. 19. 1. 33. 19. 6. 2.

(e) Art. 4. 6.

(f) 10. 7. 3. 57. 18. 6. 8. Article. 8. 1. 11. 6. 6. 11. 6. 2. 6. 3.

(g) Art. 4. 6. 8. Eliz. Dit. 186.

(h) Roll. Art. 109. 10. 4. 55.

 Vid. Lib. ib. fol. 60. 69. (H. 4.) 19. 6. 1. 6.

(f) Folk 760. 4.

When the release is to be made by the party to whom the estate is granted, the estate is not thereby enures by way of enlargement, but by a strict conveyance, the grantee being always a tenant in fee.

But there is a diversity between a release that enures by way of enlargement of the estate, and by way of mitter efiata (2) for when an estate passeth by way of mitter efiata, there sometimes need not any words of inheritance. As if a joyce cannot be made to the husband and to his wife, and to a third person and to their heirs, the third person releaseth all his right to the husband, this shall ensue by way of mitter efiata, and not by way of enlargement of the estate, because the husband had a fee simple, and needeth not have any words of inheritance.

As it is if two seafold releaseth all his right to the husband, this shall ensue by way of mitter efiata, and not by way of enlargement, because the husband had a fee simple, and needeth not have any words of inheritance.

(2) If there be three joyntenants, and one releaseth to one of the other all his rights, this enures by way of mitter efiata, and passeth the whole fee simple without their words (heirs). But if there be two joyntenants, and releaseth all his right to the other, this doth not to all purposes ensue by way of mitter efiata, for it maketh no degree, and he to whom the release is made shall have for many purposes be adjudget from the first feoffor, and this release shall vail all in the other joynttenant without their words (heirs).

But if there be two coparceners, and the one releaseth all his right to the other, this shall ensue by way of mitter efiata, and shall make a degree, and without their words (heirs) shall vail the whole the fee simple, and it is to be observed, that to release that ensue by way of mitter efiata, there must be privy of estate at the time of the release.

If two coparceners be of a rent, and the one of them take the term-tenant to husband, the other releaseth to her, notwithstanding, the same shall be in fee simple, but the estate shall ensue by way of mitter efiata, and may releaseth all to the term-tenant, and that shall ensue by way of extinguishment: but if the releasor to her sister and to her husband, it is good to see how that shall ensue.

Lilliborg having now spoken of releases that ensue by way of enlargement of the estate, and of releases that ensue by way of mitter efiata, proceedeth to release that ensue by way of mitter efiata, thereof as of that which hath been and shall be fad by our author of releases.

(c) Vid. sect. 650. It appeareth that some have by way of enlargement of the estate, none by way of mitter efiata, by way of failure and fiefdom, and some by extinguishment.

(1) Vid. sect. 650.

(2) The releasor the tenant for life in remainder obtains the immediate remainder in fee.

(3) Here the releasor operateth by mitter efiata; which is, where two parties come in by the same feodal control, as joint-tenants or co-tenant, and one of them releaseth to the other the benefit of the estate by this deed, the releasor being supposed to be already feided of the inheritance by virtue of the former feodal control, and the releasor only opening as a derogation from the right or possession of another (feid) under the same control, words of inheritance in the releasor are void, but where the releasor operates by way of enlargement, the releasor being neither either for life or in fee, so they are originally granted, the releasor gives the estate to the relees for his life only, unless he expressly made to him and his heirs.

necessary that there should be a person feided in the life, an aie in possessions, remarriage, or remainder; and a rejoyance que sa vie en vie. From their possessions some of the judges in that case inferred, that the whole life was enured in A. and B. in a manner that left making of the whole fee in the feeholders; and that the contingent estate, when it came to be in fee could not be execrated. The feeholders were releaseth in the feeholders, to serve the contingent. And as both these systems were found to be upon unanswerable objections, for, with respect to the first, one of the requisites indispensably necessary to the existence of an aie, under the statute, is that it be in writing or sealed, and the time of execution of it. Now, if the whole original fee was divided out of the feeholders, there would not, when the life of A. was broken, any person feided in his life or, in other words, there could be no fee in that aie. This would make the estate limited to the same, and all other contingent estate, void in their favor. With respect to the latter system, it is to be observed, that under the limitations upon which the case arose, A. took as an estate for life in possession, and B. took as an estate for fee in possession, previous to the execution of any person which appropriated those two estates. Their aies, therefore, were commutative to the whole fee, and admitted no opening for any intermediate vested aie. Besides, the feeholders neither limited, nor intended to limit, any such intermediate aie to the feeholders. Thus, on one hand, the objection of the statute making that making of the estate fee simple was nullifying that any aie or legal estate retained in them, it was difficult to conceive what aie or fee could be in them, to serve the contingent estate. To clear up this difficulty it was observed, that the feeholders was not executed by the feeholders, but in their times, and to the same extent, in which the aie was limited. Now, in the case we have mentioned, the aie was limited, and consequently the possibilitie executed, to the aie of A. during his life, remainder to B. in fee, but subject to the possibilitie of A's having, and then becoming limited to the feeholders, for an estate or estates in tail. Thus, during the fulfilling of the contingent aie, the feeholders had a possibilitie of possibilitie, unamed and unmeasured by the time, as it was limited.

enlarged. But if I releaseth to him and to his heirs, then he hath a fee simple; and if I releaseth to him and to his heirs of his bole diegoten, then he hath a fee tail, &c. And so it behoveth to specify in the deed what effate hee to whom the releasce is made shall have.

2. To the right. Vid. Sect. 650.

3. Par termes des airs. So it is if a releasce be made to tenant by fature, fluple or merchant, or tenant by dean, as hath been said; and so likewise to bigernde in chivalrie which holdeth in for the value, by the reverrence of all his right in the land, by this a freewill paffeth for the life of him to whom the releasce is made, for that is the greatest effate that can paffeth without apt words of inheritance. If a man make a lease for ten years, the remainder for twenty years, he in the remainder tenant all his estate, and all possicion of that estate; fore none charter cannot drone away, and yeares cannot be confumede in yares.
Sec. 466.

IT E M, as once faits releasas urera de mitter, et veler le droit ceuy que fait le releas a ceyau a que le releas est fait. Si-
come un home effet diffèr, et il re-
lèfa a son diffèr a son diffèr tout le droit que il ad, en est cas le diffèr ad son droit, iffint que lou son
èlèt adevant fauit toircues, ore per tiel releas il est fait loyal et droital.

ET il relefa a son diffèr, &c. This release so purthes the right of the dif-
faite to the diffaite, that it is the quality of the effite of the diffaite for
where his effite was before wrongfull, it is by this release made lawfull. But how farre, and to what respect his effite is changed, shall be laid hereafter in this chapter in his proper
place.

Sec. 467.

MES hic nota, que quant home est fetj in fe defe simple d'aucun terres ou te-
menents, et un autre
voile relefa a sayt tout le droit que il ad en
meuant les teemenents, il ne bejuge de pa-
ter de les bierez ceyau a que les releas est fait, per ceo que il Avoit
fe defe simple al temps de releas fait. Car si releas fait a lay
*pur un jour, ou pur un
heuer, ce seroit auxy fort a lay en lye,
si creme il releas a lay et a fet bierez. Car quant son
 droit fait a de ley a un
faits per son releas faits aucun condition, BUT here note, that
when a man is fis-
ied in fee simple of any
lands or tenements, and another will re-
leas to him all the
right which he hath in
the same tenements, he
needeth not to speake of
the heires of him to
whom the releas is
made, for that he hath
a fee simple at the
time of the releas made.
For if the releas was
made to him for a
day, or an hour, this
shall bee as strong to
him in law, as if he
had releas to him and
his heires. For when his
right was once gone
from him by his rele-
leas without any con-

ALSO, sometimes releas shall
enere de mitter, and vest the
right of him which makes the rele-
leas to him to whom the releas
is made. As if a man be diffèd, and
he releaseth to his diffèr for all
his right, in this case the diffèr
hath his right, so as where before
his state was wrongfull, now by
this releas it is made lawfull and
right. (1)

Car si releas fait a lay pur un jour, &c. For the diversity is be-
tweene a releas of part of the
effe of a right, and between
a releas of a right in part of
the kind. And therefore Lin-
ton here faith, that a rele-
leas of a right for a day or
an hour is of as good force,
as if he had releas'd his right
to him and his heires. But
if a man be diffèd of two
acres, he may releas his right
in one of them, and yet enter
into the other.

Samo aften con-


tion, et a fet bierez added L. and M. and Rob.

(1) Theo. Linet's treatise of releas, which begins by mitter le droit. Releas of this kind must be made either to the diffèr, his heires, or his heir. In all these cases the possession is in the releas; the right in the releaser; and the uniting the right to the possession completes the title of the releas. But the different degrees of title in the diffèr, his heires, or his heir, give the releas made to them different adjuncts. They all agree in this respect, that no privicy is required, or indeed can, from the nature of the use, exist between them and the releasor.

Sec. 468.?
Cap. 8. Of Releases.

Mes sou* home ad un reverencion en fie simple, ou un remainder en fie simple, at tems de releas fait, la si soyle releker al tenant pur terme d’ans, ou pur terme de vie, ou al tenant en le taille, il c锟tien a determiner l’esfate que cely que le releas esf fait avera per force de meime le releas, pur ço que tiel releas enurerar pur enlarger l’eftate de celuy a que le releas esf fait. ¶

Mes aternement es sou* home ad forzque droit a la terre, et n’es rien en le reverencion ne en le remainder en fante. Car si tiel home releffait tout droit a un que esf tenant de le frantemenent, tout fiant droit esf afe, coment que nul moutien foint fait de les boires cely a que le releas esf fait. Car si jeo leffo torres ¶ a un home pur terme

But where a man hath a reverence in fie simple, or a remainder in fie simple, at the time of the releas made, there he will releas to the tenant for yeares, or for life, or to the tenant in tail, hee ought to determine the estate which he to whom the releas is made shall have by force of thesame releas, for that such releas shall enure to enlarge the estate of him to whom the releas is made. (1)

Of this sufficient hath been said before.

Sec. 468.

SEC. 469.

But otherwise it is where a man hath a right to the land, and hath nothing in the reversion nor in the remainder in deed. For if such a man releas all his right to one which is tenant in the freehold, all his right is gone, albeit none mention made of the heirs of him to whom the releas is made. For if I let lands to one for term of his life, if I after releas

(1) All releas for mitter le droit also agree in this, that whereof intestate who are not necessary in releas which separate by mitter le droit to the difficulty, to wide a new foot, or hire, after which is made, requires the fee by the dinfinity, and therefore cannot take it under the reversion. In this respect they differ from releas by enlargment.
Lib. 3. Of Releases. Sect. 470.

de fe, si jeo puas releaf a lay pur enlarger jon eflate, it covnet que jeo releaf a lay et a fes heires de fon corps engenderes, or a lay et a fer heires et en titi paroli, Aeceer et tenter a lay et a fes heires + de fon corps engenderes, or a le slieires males de fon corps engenderes, or titi semblables eflates, or au-remenret il ni adpl plaine grande eflate que il avoit evant.

A Un que eflant de franancement. Here it appereeth, that to a releafe of a right, made to any that hath an eflate of feelhood in dreed or in laue, no privilege at all is requisite. As if a difficiler make a leafe for life, if the difficiler releafe to the leffer, this is good, and directly within the rule of Limites, because the leffer hath an eflate of feelhood in dreed or in laue. If a difficiler releafe to the leffer, the leffer in the time of the life of the leffer, the leffer to the leffer, in the time of the life of the leffer.

Sect. 470.

MES si mon tenant a terme de vie lefia mefme la terre outier a un auer pur terme de vie de fon lefies, le remainder a un auer en fies, or jeo releaf a celyq a que mon tenant lefias frere de terme de vie, or fes eflaves, par eue que al tempo de releaf fe ovoy nut reverlon, mes tanflament un driet d'over la reverlon. Car per tiel lefis, et le remainder outier, que mon tenant fia lefias or fes eflaves, non reverlon fait defetueux. || Ecc. et tel lefie uerla a celyq en le remainder, d'aver advantage de cee, auxbien come al tenant a terme de vie.

BUT if my tenant for life let- leth the same land over to another for term of the life of his lefies, the remainder to another in fee, now if I releafe to him to whom my tenant made a leafe for life of term of life, I shall be barred for ever, albeit that no mention be made of his heires, for that at the time of the releafe made I had no reverlon, but only a right to have the reverlon. For by such a releafe, and the remainder over, which made my tenant made in this case, my reverlon was discontinued, and this releafe shall enure to him in the remainder, to have advantage of it, aswell as to the tenant for term of life (1).

LITTLEON having before spoken of releases which enure by way of enlargemengt, by way of meater lefies, and by way of meater lefies, here speakeeth of a releafe of a right which (P. 479) in some respectes enure by way of extinguishment; as in this case which LITTLEON here pretendeth, the reade by way of meater lefies, for thens heuulze he have the whole right, but as twewe by way of extinguishment, in respect of him that make the releafe, and that it shall enure to him in the remainder, which is a qualitie of an inheritance extinguished.

(1) Here LITTLEON there the operation of a releafe per meater lefies, when made to the feeor of the difficiler. The feeor is in this by hauing but by an uer equal to the whole of it.

suffering a recovery, before the event happens, may have the limitations over, and thereby acquire an eflate in fee simple; and therefore the limitations over the inheritances shall be good, and the lefies as good, and the eflate in fee simple, and the feeor shall have the whole right, but as twewe have no limitation over an eflate in fee simple, in respect of him who make the releafe, and that it shall enure to him in the remainder, which is a qualitie of an inheritance extinguished.

fieq is a celyq of the use of the lands, and the heirs of their husbands. It was argued, that the eflate out of which the use should rise, was but for their lives, and that therefore, on the death of the celyq que vie, the use limited upon their eflate was determined. for the coru, and thence, where a use is limited to use, and the use to a bunch, the use should not be more than the eflate out of which it was derived, but that when the limitation is to use, to be determined by the use of the use of the use, and not by the whole of the eflate, nor was the use so exceeeded by the usor, as in this case, that the use should rise, it is expected, and a fine be levied to a man and his heirs, to the use of the use, and not by the use. And for Deor. 316. et mat. 21. b. and pl. 165. ed. 1737. p. 63. Com. 313. Stat. 525. Now that the use shall not be in the life of the use or the heir of the use, the use shall be transferred to some third person. This is the meaning of such plegges in the books, it is said that uses are either raised by transmission of the possessor, or without such transmission. A bargain and sale, and a covenant to land filled, operate on the possession of the bargainer or covenar. A feale, fine, and common recoverie, operat on the possession of the foilee, covenant, or recoveror. A releafe and releafe has a mix operation; the last having the operation of, and being in fact, a bargain and sale under the statute, and the releafe of the releaser being executed or enlarged as an ease of inheritance by the operation of the statute, the operation of the common law. For with respect, to a bargain and sale, and a covenant to land filled, a bargain and sale is considered as a real contract, whereby the bargainer for some consideration bargains and sells, and that, in conveyance to the lands to be bargained. A covenant to land filled to the life of a man in the life of his wife, his child, or kinman. Here, in the first instance, the barg-
Cap. 8. Of Releases.

Sect. 471, 472.

Extinguished. But yet the right is not extinct in deed, as shall be said hereafter in this chapter.

Mon reversio fait discontinu, &c. Here discontinu is in a large sense taken for devoted, though the entire of the lessor be not taken away, which is implied in this &c.

Sect. 471.

Sont comme un tenant en ley. Which is certainly true in this case of remainder, and is also in case of a prevent; as if a difficier make a lease for life, and the difficier doth release all the rights to the lees, this release shall clear to him in the reversion, albeit they have several estates, as hath been said, which is implied in this &c.

But if a difficier make a lease for life, the remainder in fee, albeit they to some purposes (as here is said) are as one tenant in law, yet if the difficier release all actions to the tenant for life, after the deaths of the tenant for life, he in the remainder shall not take because of this release, for it extended only to the tenant for life, as it is hidden [2] in Edward Thane's case. And in like manner, if the difficier make a lease for life, and the difficier release all the rights, or to the lees, this in fact may not come to him in the reversion, and be understood of a release of rights, and not of a release of actions, to the tenant for life, as to so for the benefit of him in the remainder or reversion.

Sect. 472.

Si home fait difficile, &c. This is to be understood where tenant in fee simple is difficier and release; for if tenant for life be difficier by two, and he releases to one of them, this shall inure to both; for he to whom the release is made, hath a longer estate than him that releases, and therefore cannot inure to him alone, to hold out his companion, for then shall the release inure by way of entry; and grant of his estate, and confoundingly the difficier, to whom the release is made, shall become tenant for life, and the reversion revoked in the lessee, [3] which revocation act and change of estate in this case the law will not suffer. But after the years be ended, and he in the reversion.

ITEM, si home fait difficile per duas, s'il reléguait un d'eux, il tiendra son com. baron des terres, et per tiet rele- se il avero la fes. et ef. ta en la terre. Mes si un difficier enjoignoit deux en fies, et le difficier reléguait a l'un des fiesseurs, ces aurero l'ambiance des fiesseurs, et la cause de diversité entre ceux deux coes d'effets prouuant. * Fur

ALSO, if a man be difficier by two, if he release to one of them (1), he shall hold his companion out of the land, and by such release he shall have the sole possession and estate in the land. But if a difficier for infusso two in fee, and the difficier release to one of the feess, this shal make both the feess, and the cause of the diversity between these two caes is prouenant -

* Fur

The remainder of the Section not in L and M nor Rob.

(1) How the release is to the difficiers themselves. They have not a bare possession, preceded by no previous conveyance, and founded on no right or title, and therefore the release of the difficiers who has the right, gives the right to the difficiers to whom it is made, and his holding out his companion is an act of consent given to that by which the joint estate by difficier was originally acquired. Thus the difficier of each of the estates being founded on an equal degree of title, the difficier to whom the difficier holds loving right, must be prested to him who has more: for, in this case, the release is tantamount to an actual entry and possession.

Benefited. In both, the possessor of focios remain in the party; and the focios throw it from them, and executes it in the effusio per se. Secondly, with respect to a focios, fine, and common recovery; and the transfer of the possession from the focios, seisin, and seisin, or to another, is affected by the operation of their conveyance or alliance at the common law; and if the focios is declared to the focios, seisin, or common, or in fee, and the conveyance is completed at the common law, in the same manner as the statute of uses had never passed. It is only when the focios is declared to be a particular Tenor, or a partition, or a common, or by the operation of the common law, that the operation of the common law, is affected by the operation of the common law, which is the same as the conveyance, or the common law of the common law, and it is not conveyed by a particular Tenor, or a partition, or a common, or by the operation of the common law, or in any way or matter under the statute of uses. As the common law, where the usual mode of conveyance was by foils, seisin, and common recovery, at the common law, is affected from the focios, seisin, or common, and is carried on by the common law, the said act of seisin or common, and as it is conveyed by the common law, the said act of seisin or common, makes this act of seisin or common, to be conveyed without words, which is otherwise an estate previously existing, it was natural to proceed one step further, and to convey a particular estate for the common, and had the power to make a partition or common, and of the particular act of seisin or common, of the said act of seisin or common, as to the execution of the particular tenant, the whole fee seisin, in the future or fee simple. If there were afterwards observed, but there was no necessity to grant the seisin to a tenant or common, and a particular estate was made to the focios, to whom it was proper to convey the fee, the reception might be immediately placed into that estate which relation, operating by the effusio per se, or by the release of the focios, would give the release of the fee. In all these cases, the particular estate or common, for years; yet at the common law, the escomble of focios is in order to create an act of seisin or common recovery, it is to create an estate of seisin or common recovery, and to deliver to a tenant, and to a tenant, a tenant in fee simple, or to a tenant, a tenant in fee simple, or to a tenant in fee simple, or to a tenant in fee simple, or to a tenant in fee simple.
ec quo seius egent inough. For that they come in by yeoffiment, and the others by wrong, 

But if the tenant for life be divided by two, and he relisheth to one of them, he shall hold his companion, for the disficey gained but the estate for life. And if two joyset for life, and after the death the tenant for life die, he shall hold his companion, for the disficey was but of an estate for life. But if tenant for life be divided by two, and he in the receipt and tenant for life joyset in a releafe, he shall hold his companion, and ye it cannot be by way of entrie and yeoffiment. But if they severally release the other several, their several releases shall euer to both the disficers.

But here is where the case is, where there is no simple is divided by two, and releaseth to one of them, this for many purposes euereth by way of entrie and yeoffiment, and therefore he to whom the release is made shall hold his companion, and he be made sole tenant of the release. And it is not only in case of a disficey, but also in case of instruction and abatement: but necessarily he to whom the release is made must bee in by wrong, and not by title. 

If two men give an advowson by yeoffiment, and the right owner releaseth to one of them, he shall not hold out his companion, but it shall euer to them both; for being there clakee by admision and institution, which are judicell act, they are not merely in by wrong; for an instruction shall cause a relevency, as it appeareth in N. B. 45. 2. 

But if a releas be made, the remainder for life, in fee, and he in remainder for life disficey the tenant for life, and then tenant for life dieth, the disficey is purged, and he in the remainder for life hath an estate for life. And if where a devis in partibus is proroged, it is procedeth, and when satisfactor. 

Where our author putteth his case of one disficey, put the case that two joyset in an estate for life be divided by two, and one of the disfices releaseth to one of the disfices all his right, he shall hold his companion, because the releas is but of the moyent, without any greater estate. If it be disficey by two women, and one of them taketh husband, and the disficey releaseth to the husband, this shall come to the advantage of both the disfices, because the husband is a man which he wrong, but in a manner by title. 

Avoe la fele possession et eire. If two disfices be, and they make a releas for life, and the disfice releaseth to one of them, this shall euer to them both, and to the benefit of the releas for life also: for he by the releas have the fele possession and capabillitie of part of the estate in another. 

And for it (as it is presently) if the disfices make a releas for years, and the disfice releaseth to one of them, this shall come to them both, for the releas he cannot have the fele possession, and the whole by the disfice releaseth to them both. But the mortgage upon condition, having broken the condition, is divided by two, and the mortgagee having title of estate for the condition broken, releaseth to one disfice, and that the other disfice releaseth to them both for two years: for there are not wrong due to the mortgagee, but to the mortgagee; and by Linoleus cap it appeareth, that wrong is done to him that made the release; secondly, that hee that makes the releas the releas for life but by force of condition, and Linoleus makes a right of a life. 

Ment dans disfice insuffisante date. And the rest of this disfice is, for that the felesere are in by title, and are presumed to have a warrantie, which is much favour in law, and the disfices are merely in by wrong. And the eire of the law doth procede in this case the benefit of the stronger to the releas containing in one point tiris.

Cura quo que seius egentins per yeoffiment, et l'autres per tort. This is a new addition, and not in the original, and therefore I passe it over.
ITEM, si jae fui disfesse, et mon disfesse est disfesse, si jae releas e le disfesse de mon disfesse, jae n’aurra a unaque affise ne entra sur * le disfesse, pur ceo que son disfesse ad mon droit per mon releas, &c. † Et igitur si jambres in tial cas, si jovyent xx. disfessiers, chebusin apres auter, et jeo releas e la darreine disfesse, † ceby disparais disfesse, † cery disparaisal barrares tous les auters de leur actions et leurs titules.

Et la caufe est, † come il dembre, par ceo que en multes cases, quant un home ad loyal title d’entre, [comment que il n’entra pas, il defeaterra tous meus titules per son releas, &c. Mes cee n’est j‘en chebusin cases, come ferra dit apres.

H E R E it is to be observed, that a release by one whose entry is lawful to him is in law by wrong, shall purge and take away all meane eschat and titles. And where our author first putteth his cafe of two eschat by wrong, and after of twentie disfesse, all eschat be wrong.

If A. disfesse B. who encoffeth C. with warranties, who encoffeth D. with warranties, and E. disfesse D. to whom B. the first disfesse releaseth, this doth defeat all the meane eschat and warranties, because the release of B. is made to a disfesse, and his entry is lawful.

ITEM, si mon disfesse lef(a) &c. If the disfesse make a leafe for life, and the leefe makeith a boone in fee, and the disfesse releaseth to the boone, the disfesse shall not enter upon the boone; for albeit the releas to one poynt boone of a disfesse, as he been tiden, shall not excluce the other yet a releas to the boone to the tenant for life in this case shall take away the entry of the disfesse for the alitenation which was made to his

ALSO, if my disfesse for leteth the tenements wherof he disfesse mee to another for terme of life, in releas to the alitenation, &c. then my disfesse can notenter, cauf et quid supra, albeit that one

vicious usfs and effates, and appoint new usfs in their stead. As soon as the usfs created by them spring up, they draw to them the effect of the fosse; and the estate executes the pollution. But it must be observed, that these powers do not operate as a conveyance of the possession or effect, but as a limitation of the use. Hence, if a person, having a power of appointment, appoints the estate to A. and his heirs, to the use of B. and his heirs, the usf is executed in A. and his heirs, and B. takes only an equitable fee.

Thus suppose a marriage tenement framed in the usual manner, and with the usual power of selling and exchanging related to the fosse; the words made use of, they can only operate as a limitation of the use; and the vendor will take the legal estate. If the fosse make a conveyance by leave and releas, there is no doubt but it will be effectual, it will operate, however, as an appropriation; the releas will take the legal estate, and if the releas is made to usfs, the intended esfaus per usf will have only equitable eschats.

Secondly, as to the relation which the death by which the power of appointment is executed, has to the deed by which the power is created. It is frequently found in the books, that when a power is executed, from that time the fosse, esfaus, receiver, or releas; is served by or out of the original fison of the conjes, receiver, fosseaux, or releas; and this it proceeds and takes place of all the usfs limited subfequens or subjuncts to the power. In this last, it clearly has a relation to the death by which it is bound; but it is bound to the life of the parties, who were alive at the time of the death of the tenant, lord Sunderland; and then it would be considered as vested in them in their lives. But lord Hardwicke denied this. He assumed that an estate afecting by effect of an execution of a power, was taken under the authority of that power, but not from the time of its creation and he exemplifies this disfesse by appointmen of usfs; in which case, says his lordship, if a fement is executd to usfs as the fosseaux shall
time was the alienation itself was to his disinheritance, &c.

care. But if the entry of the disfavored was not lawful, it is otherwise. As if a man make a lease for life, and the leasee for life is disfavored, and that disfavored is deceased, and his leasee shall enter upon the second demise, and his entry is lawful; and if the leasee for life re-enter, he shall leave the remainder in the first disfavored, and the cause is, for the entry of the disfavorer at the time of the re-entry made not unlawful. And the words of [§ 9] 1 H. 2, 25, is to be intended of an estate.

If, in the case aforesaid, the disfavored make a lease for life, and the leasee afterwards dies, and then the remainder of the foreshadow, he shall have the disfavored, as he hath been said; but yet he shall hold out his companion for the cause aforesaid.

Sect. 475.

I TEM, if a man were disfavored, let him

A L SO, if a man were disfavored, who hath a sonne within age and dieth, and the

The reason of this cause is, for that the entry of the heir is congeable, and the abator is in the land by wrong.

Abate is both an English and French word, and signifies in his proper sense to diminish, or take away, as by his entry he diminished and took away the feoffate in law demised to his heir; and so it is said to abate an account, signifying subtraction or withdrawing, &c., and to abate the course of a criminal. In another sense signifies to diminish, lessen, shorten, or abbreviate, as, to abate credits, faults, and the like, and to abate a writ; and hence nuns of account, an account; a subtraction, or diminution, which is an entry by interposition. Now the difference lies in this, that abatement is an abatement by subtraction, or diminution of estate, on account, or thing; or in some cases, an entry by interpolation. Now the difference lies in this, that abatement is an abatement by subtraction, or diminution of estate, on account, or thing; or in some cases, an entry by interpolation. Now the difference lies in this, that abatement is an abatement by subtraction, or diminution of estate, on account, or thing; or in some cases, an entry by interpolation. Now the difference lies in this, that abatement is an abatement by subtraction, or diminution of estate, on account, or thing; or in some cases, an entry by interpolation. Now the difference lies in this, that abatement is an abatement by subtraction, or diminution of estate, on account, or thing; or in some cases, an entry by interpolation.
Lib. 3.

Cap. 8.

Of Releases.

Sect. 476, 477.

Thirdly, (3) when the heire in ward executeth at his full age without rightfull for his marriage, the writ forth, hurt good conteile,

Deforament comprehended not only these aforesaid, but any that holden land wherunto another man hath right, be it by dellite or purchase, it faile to be a deforament.

Usage hath two signification in the common law: one, when an errour that no right hath pretenteth to a church, and his clerke is admistred and influent, he is faild to be suuiciator, and the wrongfull act that he hath done, is called peregrination.

Secondly, when any subjue dille of ufe, without lawful warrant, royal franchise, he faile to usurpe upon the king those franchises.

Peregrination, or peregrinacon, a peregrination, (4) a general grant, digress on a subject of an unreason can not be brought to a subject of an unreason can not be brought to an unreason.

And because it is properly when there is a house builded, or an escuelor made of any part of the king's demesnes, or of so high way, or a common street or publicke water, or such like publicke thing, it is derived from the French word peregrine, which signifieth an incursion, but specially applied, as it is aforesaid, to the common law.

Sect. 476.

HERE the entry of the deforament is deforament, and yet the release does not avoide the condition, because the foefee is in by title, as hath beene faide, and may have a warranty. (5)

And herein our author exproprie a deforament between a condition in hand, and a condition in deed; for in the cafe before when the release releaseth to the foefee to the foefee of the tenant for life, when the condition in law is taken away, but otherwise it is in this case of a condition in deed.

But if the foefee upon condition make a forgone or in any condition, and the dille on the other of the foefee foefee's, the condition is destroyed by the release before the condition broken or after. For the estate of the foefee foefee was not upon any expression condition, as Littleton here putteth his cafe, and he may have advantage of the release, because it is not against his own proper acceptance, as Littleton speaketh in the next Section.

But if it be a wrongfull title, such a title is taken away by a release; as if A. dilled B. to the ufe of C. B. releaseth to D. this shall take away the ugement of C. to the dille, because it doeth make him a wronger: as if the dille be dilled, the dille releaseth to the other deforament, this take away the right the first dille did against the second, and a condition of an estate gained by wrong full never defeat an estate subsequent gained by right, against a true opinion, not affirmed by any other in our bookes.

Sect. 477.

IN the same manner, it is where a man is dilled of certaine foefees, and the dille for...
grant a rent-charge out of the same land, &c. albeit the difference doth afterwards release to the devisor, &c. yet the rent-charge remaynes in force. And the reason in these two cases is this, that a man shall not have advantage by such release which shall bee against his proper acceptance, and against his own grant. And albeit some have had, that where the entry of a man is con-"

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Cap. 8. Of Releases.

Sect. 478.

ed by him, it shall not cease by way of entry and cestui quin; for if the discharge had entered and avowed him, the rent-charge had been avoided. But it is a certain rule, that unless the entry of a man is comeable, and he releaseth to one that is in by title, (as hereunto the former upon condition is) it shall never cease by way of entry and cestui quin, either to avoid a condition with which he accepted the land charged, or his own grant, or to hold out his companion.

And where it appeareth by our author, that acts done by the dissefier shall not be avoided by the release of the disfiees, it is to be noted, that acts made to the di fiefle is not be avoived by the alteration of his title by the release of the disfiees; as if the lord before the release had conferred the estate of the dissefier to hold by better services, the disfiefie shall take advantage of it, and so of covenants be burnt in the house, and the like law of a warrant being made unto him.

If the heir of the dissefier indeed his wife se affvoie parvi, and the dissefiefie release to the dissefier, he shall not evade the indowment, for that is by the same law by Litigation of the rent-charge.

If an alien be a dissefier, and obtain letters of denization, and then the dissefiefie releaseth unto him, the king shall not have the land, for the release hath altered the estate, and it is as it were a new purchase; otherwiise it is if the alien had here the heritor or a d. of bor. If the lord discharge the tenant, and is discharged, the dissefiefie release to the second dissefier, yet the feignecie is not revived, for between the parties the release extends by way of entry and cestui quin to the lord, but not having regard to the feignecie, and for that the possession was never actually removed or revoked from the dissefier, who claimed under the lord, the feignecie is not revived. But if the lord and a stranger discharge the tenant, and the dissefiefie release to the stranger, there the feignecie by operation of law is revived, for the whole is vested in the stranger which never claimed under the lord: and in that case, if the lord had died, and the land was revived, the dissefiefie had become revived. But if the lord had discharged the tenant, and been discharged by two, and the dissefiefie related to one of them, the feignecie is not revived, because he claimed (as hath been said) under the lord.

Sect. 478.

QUEL brieve de eux il offiera, &c.

Note, many times in one case the law doth give a man several remedies, and of several kinds, as in this case by action and by entry; by action, either a writ of right, or dem suit infra astonem. Et pues le dissefieer porta brieve de droit, &c. Here it appeareth, that there is a great art, and knowledge for a man that hath divers remedies to choose asppest remedie: as in this case, if he bring his writ of right, the dissefier shall be barred, but if he had entered upon the hous of the alience, he should have enjoyed the land for ever. For it is the house of the alience after such an entrie shall never have a writ of right, no more then if the dissefier enter upon the house of the dissefier, and make a nodivm in facie, if the house of the dissefier.

PTE M. si bene fuit dissefier per un enfant * de quem aliquem ex fe, et alieene dem suit jfeite, et non hoire en- ter, effante † le dissefieer des dissei age, ore ‡ en elecit † le dissefieer daver un brei de dem suit infra astonem, ou brieve de droit eruere le boire de alcien, et quel brieve de eux que il offiera, il doit recoer per la ley, § & c. Et auxi ilpoit entuer en la terre fossa afeun recovencer, et en cyste cafe entre le dis- jelsest ef telle, & c. Mes en cyste cas je le disse- jelse recoer poss au droit de
dem suit infra astonem, or a writ of right against the house of the alience, and which writ of them hee shall chuse, hee ought to recover by the law, &c. And also hee may enter into the land without any recovery, and in this case the entrie of the dissefier is taken away.

* dains age added in L. and M. and Robs.
† le dissefieer dissefieer, in L. and M. and Robs.
‡ de not in L. and M. nor Robs.
\[1544\] by the Chancellor D'Aguiscus to all the parliaments and superior courts of France. See Litigation concernant 1747...

It is hoped, that the importanat of the facts, and the want of a comprehends and feignecie transact upon it, will be thorouh...
Of Releas.

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Sect. 478.

279

... et puissent le diffecto porta brief de droit envers l'heire d'alience, et il Joyce mif sur le mere droit, &c. le grandere affaire doit trouver par la ley, que le tenant ad plus plus droit que adi diis, &c. per ces que le tenant ad le droit le diis, lequel est plus ancien et plus mere droit, plus car per tald hes tout le droit le diis, paie a le te-

nant, et se en le te-

nant. Et a ceci que afo-
cuns ont dit, que en tald cafe lau bone que ad droit al terres ou tenements mes fon en-

trie n'est pas congea-ble) si il relie al te-

nant tout fon droit, &c. que tald relaeve urera par voy de extin-

guiement. Quant aces il puit efre dit, que ces eff $ voyer quant a ce-
duy que relaeva car per fon relaeve il ad lay de-

mefe il quintement de fon droit, quant a fon person, mes uncor-

** le droit que il a-

voit bien paier a le te-

nant per son re-

leve. Car enconveni-

cent ferre que tald

ancien droit ferre est

intend tout affiner-

ment, &c. car il est

commemunt dit, que

... et puis le diis, porta brief de droit envers l'heire d'alia-

cence, et il Joyce mif sur le mere droit, &c. le grandere affaire doit trouver par la ley, que le tenant ad plus plus droit que adi diis, &c. per ces que le tenant ad le droit le diis, lequel est plus ancien et plus mere droit, plus car per tald hes tout le droit le diis, paie a le tenant, et se en le tenant. Et a ceci que afo-
cuns ont dit, que en tald cafe lau bone que ad droit al terres ou tenements mes fon en-

trie n'est pas congea-

ble) si il relie al te-

nant tout fon droit, &c. que tald relaeve urera par voy de extin-

guiement. Quant aces il puit efre dit, que ces eff $ voyer quant a ce-
duy que relaeva car per fon relaeve il ad lay demef fees il quintement de fon droit, quant a fon person, mes uncor-

** le droit que il a-

voit bien paier a le tenant per son re-

leve. Car enconveni-
cent ferre que tald

ancien droit ferre est

intend tout afnier-

ment, &c. car il est

commemunt dit, que

-- But in this case if the diis release his right to the heir of the al-

cence, and after the man-

for bringeth a writ of right against the heir of the al-

cence, and he Joyce the mine upon the meere right, &c. the great affaire ought to finde by the law, that the tenant hath more meere right than the diis, &c. for that the tenant hath the right of the diis by his release, the which is the most ancien and meere right: for by such release all the right of the diis passage to the tenant, and is in the tenant. And to this some have said, that in this case where a man which hath right to lands or tenements (but his entry is not congeable) if he release to the tenant all his right, &c. that such release shall en-

ure by way of extinguiement. As to this it may be said, that this is true as to him which relaeve; for by his relaeve he hath disfined himself quite of his right as to his person, but yet the right which hee hath may well passe to the tenant by his relaeve. For it should bee such an ancient right should bee extinct altogether.

by many other places it appears.

Un droit ne peut pas mor- 

dier.

Sect. 479.

MES releasees que
enurera per voy
d’extinguissement
ners tous personnes,
sant que le chef a que
le releas eft fait, ne
poit aver coe que a
by eft releas. Si-
come s’efoyent feignior
et tenant, et lefeignior
releff al tenant tout
le droit que il ad en
la feignior, ou tant
le droit que il ad en
la terre, &c., tien releas
va per voy de extin-
guissement enuers
tous personnes, par
coe que le tenant ne
poit aver* servir
prender de ley
mesfe.

Sect. 480.

FIRST, of the lord and ten-
nant, and the lord releas
to the tenant his feignior,

EN mesfe le ma-
er eft de re-

* servir pour prender—vo, I., and M., and Roh.

(1) Here Liston returns to releases by extinguishment. See ant. 269.
Of Releaves. Sect. 480, 481.

made to the tenant of the land of a rent-charge or common of pasture, &c. because the tenant cannot have that which to him is releaved, &c. so such releaves shall ensue by way of extinguishment in all ways.

this must of necessity ensue by way of extinguishment to all men; for the tenant cannot have service to be taken of himself, nor one man can be both lord and tenant. The second is of a rent-charge; a man cannot have land and a rent issuing out of the same land. Thirdly, a man cannot have land and a common of pasture issuing out of the same land, et fi de ecuria. For in all these cases the like has to whom the releave is made cannot have and enjoy the thing that is releaved. But in the case of the right of the land, the tenant of the land may take and enjoy it for strengthening his other estates.

The term being a term commensurate with the term personal, if the lord releaves to the son, the figniorum is an extint; but it is not releaved to the husband, both figniorum and extinguishment are extinct. And in this case, if the lord releaves to the husband and wife, it is a question how the releave shall ensue; but it is no question but that a releave may be made to a multitude or a figuriorum is extinguished in part of the estates.

But here observe a diversity where a releave ensues by way of extinguishment of an inheritance, which is in possession and may be granted over, and a releave a right, or an action to lands which cannot be granted over. For the lord may releave his figniorum to the tenant of the land for life or in tail, or fi de ecuria. But so cannot one releave a right or an action; for if it be releaved but for an hour, it is extinct ever, as he hath been said.

And two things are to be observed here. First, that by the releave of all the right of the land the figniorum is extinct, as well as by the releave of all the right in the figniorum, for the figniorum issues out of the land. Secondly, that by the releave of all his rights in the figniorum or the land, the whole figniorum is extinct without any worth of inheritance. If the tenure be given to a lord and to a tenant, and to the heirs of the grantor, the lord releaves to his companion the whole right in the land, this releave doth not only put his estates in the tenancy, but extinguisheth also his right in the figniorum, and so one releave ensues to extinguish all the rights in one and the same estate.

If there be lord and tenant by fealty and rent, the lord extinguisheth the figniorum for years, and the tenant strumeth, the lord releaches his figniorum to the tenant for years, and to the tenant of the land generally, the whole figniorum is extinct, and the State of the lefere also. But if the releave had been to them and their heirs, then the lefere had had the inheritance of the one mortise, and the other mortise had been extinct. And the reason of this diversity is, because when the releave is made generally, it can ensue to the lefere but for life, because it isheth by way of extinguishment of estate, and being made to the tenant of the land, it ensueth by way of extinguishment, as Luttrell here saith, and then there cannot remain a particular estate in the figniorum for life. But when the releave is made to them and their heirs, each one takes a mortise, the one by way of encuming of the flute, and the other by extinguishment.

ITEM, de prover que le grand affise doit passer par le demandant, en le cafe avantageur, paro aus secvent la lecture de l'histoire.

ALSO, to prove that the grand affise ought to pass for the demandant, in the case aforesaid, I have often heard the reading of the statute of Wesl. 2.

JEO oye oye secvent la lecture de Wesl. 2. Here it is (c. 108, 263) to be observed, of what authentick ancient barons or readings upon figures were for that they had first ex- eecit qualitiges. First, they declared what the common law.

* per extinguishment in morts-avant, sont fait par voie d'exhinition envers ces deux preufs, L. et M. and Rob. 41 en added L. and M. and Rob.
Of Releases.

Sect. 482.

which beguine thus:
In catuo vos ir antieris
per defutum tenementum
quod fuit vos fuit,
St, that at the common
law before the
making of the
trust, as here it
appeareth. Secondly,
opened the tree fence
and meaning of the
trust. Thirdly, their
cases were
briefs, having at the
most one
point at the common
law, and another upon
the statute.
Fourthly, plain
and
spacious, for the
honour
of the reader was to excite
others in authorities,
arguments, and
reasons for proofs
of his opinion, and for
confirmation of the
objections against it.
Fifthly, they read,
and
profite fulfilled inventions
to
steep out of the
statute. But new readings
having
lost all former
qualities, have
lost all their
former authorities:
for now the cases
are long, obscure,
and
intractable, fulf of new
concepts, rather
like riddles than
lectures, which when
they are opened they
 vanish away
like smoke, and the
readers are
like to be
eer near their
wells when
they are fastshd
from them, and all
the fluid is
to
find in evanes out of
the
statute. By the
authority of
Lincoln, ancient readings may be
cited for proofs of the
law; but new readings have not
that authority, for that they are
so obscure and dark.

L'effetut de W. 2. Which is the third chapter.

Le remainder ouster en fée. Here is to be observed, that although the statute
which was before a
reversion [a] yet by the authority of
Lincoln a remainder is the
trust.

Sect. 482.

H E R E a diffire
 gotten by wrong,
offered by the en-
tire of him that
right hath,
is sufficient to
maintain a
right against the
recovery in this case, for
albeit

M E S S fi cehy
en le reman-
der uft enter fur k
tenant a terne de vie,
et hy diffire, et aprés

B U T if he in the reman-
der uft enter fur k
tenant a terne de vie,
and disticied
him, and after the te-
le

[a] necesse not in L. and M. nor Roh.
[b] a rent house—al tezzen; L. and M. and Roh.
[c] a tenant not in L. and M. nor Roh.
le tenant entra fur
luy, et apres le
tenant a terme de
vie par tier recovery per-
dep art defaut et
mort, ore celuy en
le remainder bien poit
avoir briefe de droit
evors celuy que re-
covrera, parero que ceo
miue ferre ferole
mente fur le mere droit,
&c. Unceore en cest
cafe, le fejin de celuy
c de le remainder fut
defait fer entrerie del
tenant a terme de vie.
Mes paeonventure ocf-
cus voleont argure et
dire, que il n'avero
briefe de droit en cest
cafe, par ceo que quant
le miue est joines, il est
joines en tier maner,(fei-
luct) fi le tenant od
plus mere droit en le
terre en tier maner cwnt
il tient, que le de-
mandant ad en le maner
come il demanda, et por
ces que le fejin del de-
mandant fut defait per
l'entry de le tenant a
terme de vie, &c. du-
que il od nul droit en le
maner come il
demandau.

Of Releases.

Sect. 483.

A CEO poit abre dit, que ceux T0 this it may bee said, that
paroles (modo et formâ prout,
these words (modo et formâ
&c.) in multe des cafes sont prout, &c.) in many cases are words
paroles

the fejin is defeited be-
tweene the feles for life and
him in the remainder, yet
having regard to the reco-
voyery, who is a更改e stran-
ger, and has no ties, it is
sufficient against him. But
otherwise it is against the
party himselfe that defeited
the fejin, and the law is pro-
pone to give remedie to him
that right hath. And where
sume have thought, that
there is no authority in law
to warrant Litissee (opinion
herein, they are greatly mis-
taken, for Litissae hath
good warrant for all that
deth written.

Lands are lento to A. for
life, the remainder to B. for
life, the remainder to the
right heires of A. A. dieth,
B. entrieth and dieth, a
stranger intrudeth, the heire of
A. shall have a writ of
right of the fejin which A.
bad as tenant for life.

Lands are lento to A. and
B. and to the heires of A.
A. dieth, a recovery is had
against B. the heire of A. shall
have a writ of right of the
whole, but every payement
is fided per am et per
soet.

If lands be given in tayle,
to the remainder to A. in
free, the dnoe death without
fisk. his wife primenent isn't,
A. entrieth, the fise is borne
and entrieth upon him and
dieth without fius, A. shall
have a writ of right, of
the fejin which he bad.

If lands be given in tayle
to A. the remainder to his
right heires, A. dieth with-
out lisse, the collateral heire of
A. shall have a writ of
right of the fejin of A.

And to note a diversitty be-
twenee a fejin to cause paf:
fejin frances, i.e. for there is
not. The 2. 3. 4. 5. 6. 7. 8. 9. 10.
Cap. 8. Of Releases.

parols de forme de pieder, et ne-
my parols de subsistance. Car si
bene part briefe d’entree in cauf
provisio, dell’alienation fait per le
tenant en deuer a son disfabori-
tance, et comptes de dell’alienation
fait en fee, et le tenant dit, que il
ne aliena pas en le maner com
le demandant ad declare, et fur
ce son fu il lis, et trove efs per
verdil, que le tenant aliena en
le taille, ou pur terme d’auter axe,
le demandant recovera: aucoce
l’alienation ne fait en le maner
comme le demandant avoit decla-
re, &c.

WHERE modo et formâ are of the subsistence of the iusser, and where but words of form, this diversité is to be observed. (3) Where the iusser taken goeth to the point of the writ or action, there modo et formâ are but words of form, as here in the case of the writ of
entree in causa provisio, and so is the (f.) well explained in this Section. But otherwise it is when a collaterall point in pleading is traversed ; as if a defendant be alledged by two, and this is traversed modo et formâ, and it is found the formât of one, there modo et formâ is material. So if a defendant be pleaded by deeds, and it is traversed adeqne loco quâ pra-
formâ modo et formâ upon this collaterall esse, modo et formâ are so offen, as the jury can-
ot not find a defendant without deed.

Sect. 484.

TROVE oft per
verdil, que il
pient per 
fealtie
quantum. Here is an-
other diversité to be ob-
served: That albeit the
iusser be upon a collate-
ral point, yet if by the
finding of part of the
iusser, it shall appear to
the court that no such
action hath for the plain-
tiff no more than if the
whole had been found,
there modo et formâ are but words of form,
as here in the scene which
Lisbon putth of the
lord and tenant ap-
peareth.

Car le matier
del iusser es lequel il
pient de luy ou meny,
&c. Here it appeareth, that

ALSOf, if there bee
lord and tenant, and
the tenant hold of the
lord by fealty only, and
the lord disfringe the
tenant for rent, and
the tenant bringeth a
writ of trefpaß against
his lord for his cat-
tell so taken, and
the lord plead that the
tenant held of him by fealty
d and certaine rent, and
for the rent behinde he
came to disfringe, &c.,
and demand judgement
of the writ brought a-
gainst him, quare vi et
armis, &c., and the other
faith, that hee doth not
"et e., L. and M. and Rob."

Vid. Secl. precedent.
(3.B. sa. Sid. 15.)

sec. E. 4. 5. 41. 2. 4. 3.
Metitio. cap. 2.
(Deo. Pia. nis. 31.)

(See. Rep. 38.)
Of Releases.

Lib. 3.

co font a ille, et trove eft per veridict que il
tien de ley per fealite
tantam; en efli cafe le
brife abatera; et en
core il ne tien de ley en
le maner corre le feigni
ers avoit dit. Car
le mater de l'ijflue eft,
lequel le tenant tient de
ley ou nemy; car s'il
tient de ley, conent que
le feignier difcrena
le tenant pur autre
services que ne doit
ever, sonce tiel diftre
m de trespaffa; quare vi
et armis, &e. ne giff
erver le feignier, met
fors abate.

quare vi et armis, &c.

Lord, but shall abate.

co pleadeth that in his vitiation he deprived him as ordinary, and it is found that he deprived him as patron, the ordinary shall have judgment, for the deprivation is the falsehood of the matter.

The lease covenant with the lessee not to cut downe any trees, &c. and bind himself in a bode of forty pounds for performance of covenants, the lessee cut downe ten trees, the lessee brings an action of debt upon the bond, and aftereth a breach that the lessee cut down twenty trees, whereupon issue is joined, and the jury finde that the lessee cut downe ten judgement shall be given for the plaintiff; for sufficient matter of the issue is found for the plaintiff.

Sect. 485.

**AUXY, en brefs de trespaffa de batterie, en des bienes
conparts, & le defense
te faire de rien cul-
palable, en le maner
come le plaintife
juppe, et trove eft que
le defendant giff cul-
palable en autre ville, ou
en a autre jour que
le plaintife juppeg,
nonere il recouera.**

EN brefs de trespaffa de battery, et
des bienes enparts, &c.

Here Linnies speaketh of actions brought for things transitory. In which cases the wrong being done in one town, the plaintiff may only allege it in another town, as Linnies here faith, but also in another country, and the jurors upon not guilty pleaded are bound to find for the plaintiff.

Neither can the plaintiff, battery, or taking of goods, &c.

Sect. 485.

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Pl. Com. 163.


(E. 4. 29. 16. H. 7. 16. 16.

294. 16. H. 7. 16. 16.

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Lib. 3.

Cap. 8.

Of Releases.

Sect. 485.

Et &c.

And so in many other cases these words, viz., in manner as the demandant or the plaintiff hath supposed, do not make any matter of substance of the issue: for in a writ of right, whereof theWndue is joyned upon the mere right, that is as much to fay, and to such effect, viz., whether the tenant or demandant hath more right to demand than the thing in demand.
Lib. 3. Of Releasees.

Sect. 485.

he cannot give in evidence, that the beasts came thence to the plaintiff’s hedges, which he ought to have set upon the general issue, unless by reason of a rent, or charge, common, or the like.

In the meantime the defendant pleadeth non detur, he cannot give in evidence, that the goods were proved to him for money, and that he was paid, but must plead it, but he cannot give in evidence judicium, to destroy the plaintiff’s goods.

[4] So in an action of waifs, upon the plea non est factum, he may give in evidence any thing that proveth it was waifs, as by time, by brightness, by enemies, and the like; but he cannot give in evidence judicium, to destroy the waifs, or the like. [5] If one doth waifs, and before the action brought the lefesse repaireth it, and after the lefesse bringeth an action of waifs, and the lefesse pleadeth non est factum, he cannot give in evidence the special matter.

If two men be bound in bond jointly, and the one is sued alone, he may plead this matter in abatement of the writ; but he cannot plead non est factum, for it is his deed, though it be not his sole deed. [6] See in Vindiciae’s case, where a man may falsely plead non est factum, and where not, and the former books that treat of that matter well reconciled.

[7] Upon pleas administrativus pleaded by an executor, or visus visus inter maiores, if it be proved that he hath goods in his hands which were the oradissima, he may give in evidence that he hath paid to that value of his own money, and need not plead it specially. [8] In as much, if the tenant plead non est factum, he cannot give in evidence a release after the special matter; but a release before the special matter, he may, for there is no difference on the matter.

In a writ of right, if the tenant enjoy the site upon the mean right, he cannot give in evidence a collateral warranty; for he hath not any right by it, and therefore it ought to have been pleaded.

Of this learning you shall read plentifully in our books, and in my Reports. This little talk shall here suffice to make the reader capable of the right. Regularly whensoever a man doth any thing by force of a warrant or authority, he must plead it.

But all that hath been said must be under two cautions: first, that whensoever a man cannot have advantage of the special matter by way of pleading, there shall take advantage of it, to the evidence. For example, the rule of law is, that a man cannot justify in the killing or death of a man; and therefore in that case, he shall be received to give the special matter in evidence, as that was it factum, or in defence of his house in the night against thieves and robbers, or the like.

Secondly, that in any action upon the case, trespass, battery, or of false imprisonment against any justice of peace, mayor, or of the town or city, in which he is in any manner involved, he shall be able to give in evidence, that he was justly justified, and that he did not do it.

In an action of trespass or other suit against any person for taking of any damage or other thing done by force of the commission of sheriffs, the defendant in any such action shall and may take averment, assurance, or justification generally, that it was done by authority of the commission of sheriffs for lot or tax assessed by that commission; and the plaintiff shall not by it be of his own wrong, without such evidence. And both these acts were made for avoiding of vexation and vapidum of pleading, tending to the great charge and danger of officers and ministers of justice, &c. Evidence, evidences.

This word in legal understanding doth not only contain matters of record, as letters patentes, fines, recoveries, indemnities, and the like, and writings under foils, as charters and deeds, and other writings without foils, as court rolls, accounts, and the like, which are called evidences signatae, but in a larger sense it containeth also evidiones, the testimonies of witnesses, and other proofs to be produced and given to a jury, for the finding of any thing joined between the parties. And it is called evidence, because thereby the point in issue is to be made evident to the jury.

Prob-assets adhib evidences (ad fid) præscia et foils intelligi. But let us now return to Lithenon.

Qui auctor juris est, qui est lefesse supposita. [9] As if the trespasser were done the fourth of May, and the plaintiff allurgh the same to be done the fifth of May, or the fifth of May, when no trespasser was done; yet upon the evidence it telleth out that the trespasser was done before the action brought, it followeth; and this is warranted by Littarc, who speaketh indirectly, that the jury may find the defendant guilty at another day than the plaintiff supposita.

Et a tiai effect. Here is to be obetered, that the law of England requiteth the effect

[9] Yet if the matter be pleaded specially, that is one of devisors, though it amount to the general issue, because it is an act of matter, or vice. As was adjudged by Edjard Halbert, in 47, 79. Lond. Nat. Misc. 7.

effect and substance of the matter, and not every nicety of forme or circumstance: 2si hostis in litteris, hostis in cortedis, et apud juris non sunt juris.

Sect. 486.

ITEM, si homo sit diffejus, et le diffejor devieje, &c. et suum situs et heire eft ens per different, et le diffejor enter fur l'heire diffejor, lequel entrie eft un diffejor, &c. si l'heire port affize, ou briefe * de entre en nature de affize, il reco- verra.

AND the reason hereof is, for that in the writ of right mentioned in the next Section, the charge of the grand affize upon their oath is upon the meere right, and not upon the position.

Sect. 487.

Car si le heire le diffejor, &c.

Here is a diversitie to be obserued concerning that which hath been said, when the position shall draw the right of the land to it, and when not. And therefore when the position is first, and then a right commeth thereunto, the entry of him that hath right to the position shall gaine also the right which, as before it appeareth in those cases there put, followeth the position, and the right of position draweth the right univit; but when the right is first, and then the position commeth to the right, albeit the position be defeated, (as here in Liddons case it is by the heire of the diffejor) y't the right of the diffesce remaineth.

Briefe d'entrie en le per. A. dythe feid, and the land defendeth to B. his feign; before he entret, an estranger aburth and dythe fied, B. entret, against whom the brieve et the aburth recovret in an affize, B. may have a writ of sure of au-  

* de entre en nature de affize il recovera. Mes si l'heire port (the beginning of next Section) not in L. and M. nor Roh. but in both MSS.

* * *
Sect. 488.

MES fi le beyre doit recouer ensors le defieese en le case avant ditz per briefe de droit, donque tout son droit ferroit clere-ment ale, par cee que judgement final ferroit done ensors lay, que ferroit rencontrer reazon lau le defieese ad le plus meere droit, &c.

JUDGEMENT final. The forme whereof you shall see in the last Section of this chapter.

Que serra encounter reazon. Argumentum ad incommuniati.

Sect. 489.

ET preche, mon filz, que en briefe de droit, apres cee que les quater chivallers ont esie le grand conseil, donque il n'ad plus greinder delaey que en un brief de forme- don, apres cee que les parties font a issue, &c. Et si le mifse soit joynie sur le bataille, donques il ad meindre delaey.

BATAILE. See for this word in the last Section of this chapter.

issue, &c. Or demuret, which is an idiole in law.

Sect. 490.

ITEM, release de tout le droit, &c. en esfen sef est bone, foit a cogniz que est supposé tenant en ley, content que il n'ad rien en les tenements. Siomme en pricipipe queul redast, si le tenant atie- ha la terre pendant le briefe, et puis le demandant relefie a

ALSO, a releafe of all the right, &c. in some case is good, made to him which is supposed tenant in law, albeit he hath no-thing in the tenements. As in a pricipie quod reddet, if the tenant alien the land hanging the writ, and after the demandant releaeth

In the same manner it is in a precipe quod reddat the tenant vouch, and the vouchee enters into warranty, if after the demandant relefa al vouchet a tenant's right, this is good enough, for that the vouchee after he hath entred into warranty, is tenant in law to the demandant, &c.

Here it doth appear, that there is a tenant in deed and a tenant in law, and Linetam in this and the next Section putth two examples of tenants in law, viz. (6) the tenant in a precipe after alienation, and of the vouches, whereof somewhat hath been told before.

And it is observable, that Linetam faith, that in both cases he is tenant in law to the demandant, and yet he hath nothing in the land. And therefore if after the vouches hath entered into warranty, and become tenant in law, an ancestor collaterall of the demandant relefa al vouchet with warranty, he shall not plod against the demandant, for that the relefa by the estranger is voids, which, besides the authorities before vouchet, appeareth by Linetam himself; for he faith, that he is tenant in law to the demandant, whereby he excludeth that he is tenant in respect of any estranger.

Sect. 492.

NOTE, there are two kind of actions, viz. one that concern the pleas of the crown, plaita crevamy, or placita criminala; another that concern common pleas, placita communia, inis civilia. Of that which concerneth pleas of the crown, Linetam speacheth hereafter in this chapter. Of actions concerning common pleas, Linetam speacheth in this place. And there are threefold (that is to say), real, personal, and mixt. Placitum realis, et personalis, et mixtum; et auuainmunt, or, Actions quadran sunt in

ITEM, quant al releases of actions, real and personal, it shal amount, that all actions shal mixt in the realty and in the personalty: for example, an action of waft fued against tenant for life; this action is in the realty, because the place wafted shall bée recoverd; and alio in the personalty, because per-
Lib. 3. Of Releases. Sect. 492.

... testi sunt in perfessum, e. (2) laudem moveo. And general...

(2) Vide Sect. 149. Emb. lib. 3. fol. 98. (2) Penta lib. 6. cap. 5.

... Mirr. cap. 2. 21. ...

... auter clauso que loquili demanda de finem.


... Tentur per viam. And so it is if it is brought against tenant for years, because it agrees with the reason of Littore here rendered, wth. that the place would still be recovered.

... therefore founded in the reality.

... Launcy is a perfect action, per coe quod ubi damages ferre recovera, which does not found in the perfessus. Therefore Littore concludes, that in an action mixt a release of all actions is a good plea, and so is a release of all actions persona.

And hence it is to be observed a diversity between the act of the party, and an act in law; for a man by his own act cannot alter the nature of his action; and therefore if the leffer for life or lice for years do waste, now is an action of waste given to the lessor, wherein he shall recover two things, wth. the place washed, and treble damages: in this case if the lessor releas all actions really, he shall not have an action of waste in the personalty only; and if he release all actions persona, he shall not have an action of waste in the reality only.


... if a man make a release per terme d' autre vie, and the leffer doth waste, and then effy qvite dyeth, an action of waste [Nov. 118.]

... the leffer shall not have an action of waste.

... But by act in law the nature of the action may be changed; as if a man make a release per terme d'autre vie, and the leffer doth waste, and then effy qvite dyeth, an action of waste shall lye for damages, because the other is determined by act in law.

... And again, heretofore is another diversity to be observed, that in case when an action is well begun, and part of the action determineth by act in law, and yet the like action for the residue is given, then the writ shall not abate, but proceed. But where by the determination of part the like action remaineth not for the residue, there the action well commended shall lye.

As if an action of waste be brought against tenant per terme d'autre vie, and hanging the writ effy qvite dyeth, the writ shall not abate, but the plaintiff shall recover damages only, because if effy qvite had died before any action brought, the leffer might have an action of waste for the damages. So if a siciliano feme be brought, and the issue incurrere hanging the action, yet the action shall proceed for damages only, because an siciliano doth lye after the residue for damages only. But if tenant per matte make an affiss, and effy qvite dyeth hanging the writs, albeit the writs were well commenced, yet the writ shall abide, because no judgment can be maintained for damages only.

So if an action of waste be brought by baron and tenant in remainder, in especialty, and hanging the writ the wife dyeth without issue, the writ shall abide, because every kind of action of waste must be ad vacabundum.

If in a writ of summetry be brought, and the summetry determineth hanging the writ, the writ shall lye for ever, because no like action can be maintained for the arraiges only, but for the summetry and arraiges.

But where damages only are to be recovered, there albeit by act in law the like action lyeth not afterwards, yet the action well commenced shall proceed; as if a conspiracy be brought against two, and one of them dyeth hanging the writ, it shall proceed.

And in an affiss of summetry, a writ of siciliano, and other mixt actions (1) a release of all actions is a good plea, and so is a release of all actions persona.

But if three yeomans be disliked, and they arraign an affiss, and one of them releaseth the action to the disadvantage of all persons persona, this shall bar him, but it shall not barre the other homo persona; for having regard to the personalty he shall prefer, a siciliano with adjut minas dipon. [8] And in a writ of ward brought by two, the release of the one shall not give the other, but shall enure to his benefit, for he shall recover the whole ward, and hold his composition of rent.

... But here a diversity is to be observed between rerel actions, wherein damages are to be recov...
recovered at the common law, as in an affize, &c. and real actions where damages are not to be recovered by the common law, but are given by the statute, for there a release of all actions personal is no bar, as in the writ of dower, enire nor dixit in le fer, &c. non dant, nisi, &c.

* Sect. 493.

L'E diffezor bien pour peder. E T mesme le man- nayer est en affi- fée de novel dixi- fin, pur ce que il est mixt en le realit et en le personalite. Mes si un tien affies sova ar- raingne enter le dif- fiezor et le tenant, le dif- seior bien past peder un releas d'actions personal pon barrer l'affies, mes nemy un releas d'actions real, car mal pederas releas d'actions reals en affiez forseque le te- nant.


AND in a quare impedit, a releas of actions personal is a good plea, and is a releas of actions reals, per Martin, quod fuit concefem. Hill. 9. H. 6. fol. 57.

THIS is an addition to Litchfield, which although it be law, and the book truly cited, yet I pass it over. But yet none by the way, that a releas of actions personal
is also a good plea: in a quare impedit, because it is an action mixt.

* Sect. 494.

IN the same manner it is an in affize novel dixifin, for that it is mixt in the realt and in the personaltie. But if such an affize bee arraigned aagainst the diffeor and the tenant, the diffeor may well plead a releas of actions personal to barre the affize, but not a releas of actions reals, for none shall plead a releas of actions reals in an affize but.

Le diffezor bien est en affize de novel dixi-fin, pur ce que il est mixt en le realit et en le personalite. Mes si un tien affiez sova ar- raingne enter le dif- fiezor et le tenant, le dif- seior bien past peder un releas d'actions personal pon barrer l'affiez, mes nemy un releas d'actions reals, car mal pederas releas d'actions reals en affiez forseque le te- nant.

L'E diffezor bien pour peder. E T mesme le man- nayer est en affi- fée de novel dixi- fin, pur ce que il est mixt en le realit et en le personalite. Mes si un tien affiez sova ar- raingne enter le dif- fiezor et le tenant, le dif- seior bien past peder un releas d'actions personal pon barrer l'affiez, mes nemy un releas d'actions reals, car mal pederas releas d'actions reals en affiez forseque le te- nant.
Sect. 495.

ITEM, en tiels aëcions reals que coxient d'efere fue ensvers le tenant del frantemenent, si le tenant ad un releas d'aëcions reals del demandant fait a luy devant le brefe purcàfæ, et il pless coo, il est bon pleur par le demandant a dire, que celuy que plessa le pleur n'avest rien en le frantemenent al temps del releas fait, car adonc il n'avest caufe d'avoir aucun aëcion real ensvers luy.

ALSO, in such actions reals, which ought to bee sued against the tenant of the freehold, if the tenant hath a releafe of actions reals from the demandant made unto him before the writ purchased, and he plead this, it is a good plea for the demandant to say, that hee which plead the plea had nothing in the freehold at the time of the releas made, for then he had no caufe to have an action releas against him.

THIS is evident enough by that which hath beene said, that a release of all actions reals must bee made to him that is tenant of the land, because a real action must be brought against such a tenant.

Sect. 496.

ITEM, en home post enter en terres ou tenements, et assy poit ave un aëcion real de coco, que est donc per la ley ensvers le tenant*; si en cest cafe le demandant relese al tenant touts maners de aëcions reals, oncoco ne tolle le demandant de son entrie, mal le demandant bien poit enter nient contrifyingt tief releas, par coco que nul clofe of relese forgque l'action, &c.

ALSO, in such cases, where a man may enter into lands or tenements, and also may have an action releas for this, which is given by the law against the tenant; if in this case the demandant releaseth to the tenant all manner of actions reals, yet this shall not take the demandant from his entrie, but the demandant may well enter notwithstanding such releas, for that no thing is releas but the action, &c.

POET enter. Here it appeareth, that where a man may enter, a releas of all actions doth not barre him of his right, because he hath another remedy, ouz. to enter. And this is agreeable with the authority of our [/] books. But where his entry is not lawful, there a reliefe of all actions is by consequent a barre of his right, because he hath releaseth the mean whereby he might recover his right. As if the diffelte releas all actions to the heire of the difficelte, which is in by diffict, he hath no remedy to recover the land; but yet the difficelte hath a right, for that hee hath releaseth his actions, and not his right, as shall be faid hereafter in the chapter of Remiter in his proper place. If the heire of the difficile make a feallment in fez to two, and the difficile releaseth one of the fourtes all actions, and hee dieth, the survisour shall not plent this releas for the causes aforesaid. And hereby also again appeareth another diversity between a release of a right, and a release of actions.

* &c. added L. and M. and Rob.

It is to be observed, when a man hath overall remedies for one and the same thing, be it real, personal, or mixt, albeit he releaseth one of his remedies, he may use the other.

Sect. 497.

EN meyne le maner de chofes personalis; sicome hone a tort prent mes biens, si jeo relesse a ley toute actions personalis, uncore jeo puiffe per le ley prendre mes biens bors de son possesion.

This of it fals is evident.

Sect. 498.

AUXT, si jeo ay * auncu cause d’auter briefe de detinue de mes biens vers un auter, consent que jeo releesse a ley toute actions personalis, uncore jeo puiffe per le ley prende mes biens bors de son possesion, pur ceo que nul droit de les biens est releesse a ley, mes folment l’action, Ec.

ALSO, if I have any caufe to have a writ of detinue of my goods against another, albeit that I releaseth to him all actions personalis, yet I may by the law take my goods out of his possession, because no right of the goods is released to him, but only the action, &c.

Sect. 499.

PER cause del statute. THAT is to say, the statute of 4. H. 4. ch. 7. and 5. H. 6. c. 4.

Car s’il voue ple-

Her is appeareth, that when the statute had given the action real pa-

ot in L. and M. not Rob.  "per it by not in L. and M. not Rob.  &c. added L. and M. and Rob.
touts actions reals, et puis il sait vers loy breve d'entre en nature d'affe par cause de le statuté, pur ce qui prent les profts, &c. Quere, com- ment le defiost fer- va aide par le dit re- leas; car il veult ple- der le relas gene- ratment, donc le demandant poit dire, que il n'avait rien en le fraudeusement al temps del relas fait; et il plida relas specialmente, donc il voient " con- nuyre un difficult, et donc il poit le demandant enter en le terre, &c. per son conusans de le difficult, &c. mes peradven- ture per efsiel ple- der il boy poit barrer de l'action & que il sait, &c. coment le de- demandant poit enter.

Of Releases. Sect. 500.

Also, if a man sue an appeal of de- lony of the death of his ancessor against an- other, though the app- ellant releas to the defendant all manner of actions real and person- nal, this shall not afe the defendant, for that this appealis not

gainst the person of the (2 Sam. 7.)

3 H. 7. 9.

38.

Dones ses co- cient configuer un diffici-

fus, &c. In a writ of (8 Rep. 193.)

he dover the tenant pleaded that before the writ purchas- ed s. was tried of the land, &c. until by the tenant him- selfe he was diififed, and that hanging the writ s. re- covered against him, &c. judgment of the writ, and a judged a good piece, in which piece the tenant conffiffed a diififion in himself.

Doungs poit le demandant enter s. &c. might he have done in this case that Lictus putth, albeit the tenant convicted no diififion. And therefore it is no prejudice to the re- quest to conviffle a diififion in himselfe, &c. and then, as Lictus here holdeth, the action shall be barred. But the reader is to ob- serve, that now by the statuté of 27. H. 8. 179. 10. which executes the petition to the use, all the actions against customis paraly, or person of the profts, here had their force.

* he added in L and M and Robs.
† que il sait, &c. not in L. and M. nor Robs.

11
[Lib. 3. Cap. 8.]

Of Releases. Sect. 500.

> (4) Crimenium quodam similitudinis non nobis induci debet, quidem non minus. [c] De pocho yé brevia deiitatis, car es mortal uerum falsabile sine qua appetit re pernitas. Et quod crimen est mortal et corporalis: mortale, quia mortem etiam pecuniam et serviendum ad quod est. Et quod crime est mortal et corporalis, non est remissum vel absolutionem, nisi in alio tempus. 


> [j] Misc. ca. 1. 4. & cap. 4. des peccat et diversa manerar.

Appeals de falsitates. [x] Appellit significate affectum, an accusation, and therefore to appeal a man is as much as to accuse him: and in [y] ancient books be that both appeal is called succubation, and is peculiarly in ecclesiastical signification applied to appeals of three sorts. First, of wrong to his ancestor, whose heire must he is, and that is onely of death, whereof our author here speakeseth. The second is of wrong to the husband, and is by the wife only of the death of her husband to be proceeded. The third is of wrongs done to the appellants themselves, as robbery, rape, and usury. The word appellate is derived of appellatio, to call, because appellatio vocem reum in judicium, he calleth the defendant to judgement, and the plaintiff is called the appellant.

Appellatio is a removing of a case to any ecclesiastical court to a superior; but of this there is absolute no scope in this place.

De mort. Appeal of death is of two sorts, of murder and of homicide. Murder is when one is slaine with a man's will, and with malice prepens or foresought. Homicide, as it is legally taken, is when one is slaine with a man's will, but not with malice prepens. Chance-medly, or in the forest, is when one is slaine casually, and by misadventure, without the will of him that doth the act, whereupon death infueth; but of this no appeale doth lye. Murder consuemat of the Saxon word wrotan. Wrotan is an old Saxon word, sometimes written wrotan, and signifieth the price of the life of a man, Eximie capitis, that is, so much as one paid for the killing of a man; by which it appeareth, that such government was in those days, as slayers of men were most rarely committed, as writer Lamard colofeth. And you shall not made of any interception or rebellion before the Conquest, when the viole of frankpledge and other ancient laws of this realme were in their right use.

Mes s'il releve au defendant tods manners d'actions, &c. And the reason is, for that there all actions, as well criminal as reall, personal or mixt, be releasable. But a release of all actions reall and personal cannot barre an appeale of death, because that release extendeth to common or civill actions, and not to actions criminal; but releases of all actions criminal or mortal, or concerning pleas of the crown, are good telles in an appeale of death, and so the (Sc.) in the end of the Section is well explained.
ITEM. en appeale de robery, 
§ the defendant voile pleader 
un releafe of the appellant of all 
tactions personals, cee semeble nal 
plee; car acris de l appeale, 
due l appellete aura judgment de 
mort, &c. est plus haut que 
avtion personal est, et n'est pas pro-
procuent dit acris personal: et 
pour ce si le defendant voile 
pleader un releafe del appellant de 
barrer lay d'appeals, en cee 
cafe il coevient d'aver un releafe 
de tout manners * d'appeals, ou 
touts manners d'actions, come il 
femeble, &c.

Robbery, Robbery, properly is when there is a felonious taking away of a man's 
goods from his person: and it is called robbery, because the goods are taken as it were 
de la robe, from the robe, that is, from the person; but sometimes it is taken in a larger 
W. v. cap. 39.

Judgement de mort, &c. By this (sec.) is implied appeals of rapte, of arson 
or burning, of felony or lancover, for therein also is judgment of death, and are within 
our author's reason.

Come il femble, &c. It is to be understood, that, first, a release of all actions 
criminal, mortal, or concerning pleas of the crown; secondly, a release of all actions 
generally; thirdly, a release of all appeals; and lastly, a release of all demands, are 
good bares in all these kinds of appeals.

But in appeals of mayhem a releafe 
of all manner of actions personalis is a 
good plea in barre, for 
that in such an action 
hee shall recover no 
thing but damages, &c.

Mayhem, ma-
ception, member mali-
lino, or osfractio, committ 
of the French word me-
henger, and signifies a cor-
porall hurt, whereby hee 
lethe a member, by reason 
whereof hee is lethe able to 
sight, as by putting out his 
eye, breaking out his fore-
theth, breaking his skull, 
ri-
king off his arme, hand, or 
foote, or whereby hee loatheth the use of any of his said members.

Damage, &c. Vide Sect. 194.

Releafe de todos manners actions personals of bone plea, &c. And the 21. H. 6. 16. 
reason is, for that every action wherein damages only are recovered by the plaintiff, is in 
(Amb. 137.) 9 Rep. 20. law taken for an action personalis.
Lib. 3. Of Releases. Sect. 503.

Sect. 503.

V. II. 11. Sec. 503. & 504. In Med. a cula upon what judgemen
tment and a suit a writ of
er error bine.

(Cro. Cas. 68.)


II. 11. Sec. 505. Faber's cafe.

Li. 3. Sec. 505. Iskiamen's cafe.

(Cro. Cas. 65. Nov. 68.


2. Rep. 61.)


(Ant. 14th b.)

Lib. 3. Sec. 506. Zouch's cafe.

(2. Rep. 111.)

(Ant. 14th b.)


Dyer bo. 18. 25. Vid. sect. 177.

(6. Rep. 22. Y. N. B. ca. 28. b.)

1. II. 4. 6.

(1. II. 4. 6. Rep. 150. 166.

8. B. S. c. 11. 32. 11. 33.

18. 18. 11. 11. Cro. Cas. 372. 58.

5. Rep. 45. 47.)

BRIEFE de error. This writ lyeth when a man is ignorant of any erro
ror in the foundation, pro
ceeding, judgment, or exec
uction, and therefore it is
called breve de errore corri
gente. But without a judge
ment or an act of the judge
ment, no writ of error doth lie; for the words
reddition fit: and that judge
ment mull regularly be given
by judges of record, and in a certe of record, and not
by any other inferior judges in lower courts, for thereup
on a writ of fals judicatum doth Iye. In this case of
unlawly upon procee, the judgemen is given (in the
county court, which is no court of record) by the cor
zens (saving London) judgemen is given by the recorder,
and not by the mayor, who is corneren by the exchequer of
the city): for after the defendant is quito cetrain, and (nowth default, the judgement is, ideo sentence for judicium corrigentum: and is in London, per judicium recordarii: so as by the outlawry, the plaintiff recovers nothing.

But in London, new suits are allowed, and the plaintiff
may have a new trial. But in all other parts of the kingdom.

ALSO, if a man bee

outlawed in an

action personal by

proceede upon the ori

inal, and bringeth a writ of error, if he at whose feet he

was outlawed, will
pleade again him a

release of all manner of

actions personal, this
comeeth not to plea;

for by the said action, he shall recover nothing

in the personalit

t, but only to revere

the outlawrie: but a

release of the writ of error is a good plea.

Car per le dit action il recoureu rien en le persona
t. Hereupon is to be

observed a diversit, when by the writ of error the plaintiff shall recover, or be referred to

any personal thing, as debt, damage, or the like: for by the reason that Londines, here yeeldeth, the releafe of all actions personal is a good plea, for that the plaintiff is to recover, or to be referred to something in the personalit. And so likewise when lawd is to be

recouere, or to be referred in a writ of error, a releafe of all actions real is a good barre. But where by a writ of error the plaintiff shall not bee referred to any personal or real thing, then a releafe of all actions real or personal is no barre; and therefore Londines here parte his case with great caution. If a man (fath he) by proceede upon the original be outlawed, there in deed he shall be referred to nothing in the personalit against the plaintiff.

But where by the outlawry he forfeited all his goods and chattels in the king, he shall be referred to them; and thereby he shall be referred to the law, and to be of ability to sue, &c. But if the plaintiff, in a personal action, recover any debt, &c. on damagery, and he be outlawed after judgement, there in a writ of error brought by the defendant upon

the principal judgement, a releafe of all actions personal is a good plea. And in it is where a judgment at first is given in a writ of action, a releafe of all actions real is a good barre in a writ

of error brought thereupon.
THE latter pages of the Chapter on Releases relate almost entirely to the useful, but abstruse and complicated, learning of Special Pleading. The Editor's professional studies having been directed to those branches of the law which relate to conveyancing, he finds himself unable to write any annotations either on the text or the commentary contained in those pages. He might fill them with notes; but he thinks it more honourable to confess his total ignorance of the subject, than, knowingly, to present the public with observations which must be uninteresting, and which might be of a nature to deceive and mislead the Student.

Lincoln's Inn, Nov. 9, 1785.

Erratum, page 241, note 4, line 9, instead of grantor read grantee.

Replaced before fol. 2009 a.
If the tenant in a real action relates to the defendant after recovery his right in the land, he shall not have a writ of error, for that he cannot be referred to the land.

And do it is if debts, &c. or damages be recovered in a personal action by false verdict, and the defendant brings a writ of attaint, a release of all actions personal in a good barne of the attaint; for thereby the plaintiff is to be referred to the debt, &c. or damages which he lost: the like law is if a judgment be given on a false verdict in a real action, a release of all actions real is a good barne in an attaint. For both the writ of error and the writ of attaint doe influe the nature of the former action, &c.

And so it is if a writ of andrue perverta be brought by the defendant in the former action to discharge himselfe of an execution, a release of all actions personal is a good barne, because he is to discharge himselfe of a personal execution.

Mes un releas de briefe de error of bone plia, &c. So is it in this special case here put by Lord Lee, wherein the plaintiff is to recover or be referred to nothing against the party; yet for that the plaintiff in the former action is privy to the record, a release of a writ of error to him is sufficient to barre the plaintiff in the writ of error of the facts, and execution by the writ of error. And so note that an action real or personal doth imply a recovery of something in the realty or personality, or a deprivation to the latter, but if writ (1) implies neither of them, which is worthy of observation.

Section 504.

IT E M, si bone recovera debt oue damages, et il releas al defendant vuents maners actions, uncore il pai toalment fier execution per capias ad satisfaciendum, super elegit, or fieri facias: for execution per tal briefe ne poit fieri de action.

Also, if a man recover debt or damages, and he releaseth to the defendant all manner of actions, unless he pay the whole amount for execution per capias ad satisfaciendum, or by elegit, or fieri facias: for execution upon such a writ cannot be sued for an action.

Per cap. ad satisfaciendum. This is a judicial writ for the taking of the body in execution until he hath made satisfaction; where a capias ad satisfaciendum is writ at the common law; and where it is given by statute, you may Judge as large in my Reports.

I have read two ancient records touching the taking of the body in execution, whereas, to my remembrance, I never read any such in our books, yet will I quote them, and have them to the judicious reader. William de Radn brought an action of trespass of breaking his close against John Merton, and upon not guilty pleaded, he was found guilty and damages affirmed; whereupon judgment was given that the plaintiff should recover his damages, and goods praeda of Johannis. And the record hath, Sit praecedit Johannes urbani domini regis et rei deis, et praeda, et quis confutat soror de inueniendi corporis uxor Johannes, culpae idem Johannes de nullis attinent gravi parvo injuriam mani facta, suo pacto, et quia deinde, quod est inde pot est. The other record in This Ellen Aliis brought an action of debt against John Bobbelele clerks, Richard Cobbe, and others, who pleaded not guilty, and were not found guilty: whereupon judgment was given that they should give one, et praedia Ellen per tale appellate for commutation servitus, &c. (for (1) by the statute the ought to be imprisoned in that case for 4 yeares). But the record hath, Ego raden Ellen per magna faut, et in perpetuo moriens, et sit dimittitur for nullification, &c.

There

(1) That is, a writ of error.

(2) The record at large is stated in 12 Rep. fol. 116.
Cap. 8.

Of Releasfs.

Sect. 504.

There be certain maximts in the law concerning executions, as taking some instead of many. Es cas in curis inimicis victa astra, debet executionem demersi debere. Parum est

litteram effustam nisi numeratur executionem. Executis juris non habebi injuriam. Executis

effuctibus et fines legi. Juris efflusus in executione conflit. Professionis legi ex gradis erratio,

executis legis certum est. Muni judicis ex judicium non alienum mandare execurium. Favourabilius sunt executiones utiis praecipuius quilibutque. But now let us hear what

Litiensius faith.

Per elegiti. This is also a judicial writ, and is given by the statute cyther upon a recognizance; for if a person in an execution be sued, and it is called a writ of elegiti, for that according to the statute that faith, [1] est de cur-

ttors in cibitibus illius, &c. Inquit brevi radix vincit omnes fere, &c. vel quid librum et &c. The words of the writ bre, Elegiti filii liberrinit. &c. And thereupon it is called an elegi.

By this writ the sheriff shall deliver to the plaintive annis catellis debitoris, (exceptis bobus & aetris carcer et) mediationem terrae. And this must be done by an inquest to be taken by the sherif.

When Litiens wrote, by force of certain acts [A] of parliament, execution might be had of lands (besides by force of the elegiti) upon plaintiffs merchant, statutes flupit, and recognisances taken in some court of record; and since he wrote, upon a recognizance or bond taken by force of the statute [*1 of 23. H. 8. before one of the chief justices, or the major of the staple, and recorder of London out of term, which hath the effect of a statute flupit. The manner of the executions upon body, lands, and goods, appeareth in the statutes quoted in the margin.

Since Litiens wrote, a profitable statute hath been made [2] concerning executions of lands, tenements, and heredittaments, whereby it is provided, that if after such lands, &c. be had and delivered in execution upon a just or lawful title, wherewith all the said lands, &c. were liable, tied, or bound at such time, as they were delivered or taken into execution, shall be recovered, delived, taken, or evicted out of, or from the possession of any such person, &c. here before such times, as the said tenants by execution, their executors or assignees, shall have fully levied their debt and damages, for the which the said lands, &c. were taken in execution; then every such recoverer, obligee, and recognizee, shall have a fieri facias out of the same court from whence the former execution did proceed, against such percur or portions as the former execution was purfided, their heirs, executors or assignees, to have execution of other lands, &c. liable and to be taken in execution for the relief of the debt or damages.

Elegiti of interprates.

Therefore, first, it is to be known, that where the tenant by execution hath remedy given to him by law after eviction, there the statute extendeth not to it; for the aid faith, by reason of the oath of the recoverers, obligees, and recognizees, have been thereby unprovided; but the remedy, &c. and the body redreseth to the preamble, and the party ought not to have double satisfaction, one by the former laws, and another by this statute.

And therefore it is part of the land, &c. be evicted from the tenant by execution, this statute extendeth not to it, because he should hold the reducit, till he be fully satisfied, and he must be contented if all be evicted having one acre to hold that, though it be a poor remedy; for no new execution in that case he can have upon this statute. Therefore if the cousee hath remedy to press for part, or in future for all, or part, this statute extendeth not to it.

Secondly, if a man be bound to A. in a statute of a thousand pounds, and by a latter statute to B. in a hundred pounds, and B. first extendeth, and then A. extendeth and takes the land from B. yet B. shall have no aide of the statute, because after the extent of A. B. shall re-enjoy the land, by force of his former execution.

Thirdly, if the wife of the consower recover dower against the tenant by execution, he shall hold over, and shall have no aide of this statute.

Fourthly, if a man put out his lessee for years, or disfrife his lesec for life, and after knowledge a statute and execution is made against him, and the lessee recovers, the tenant by execution after the lessee ended, shall hold over, and have no aide of this statute.

Fifthly, this statute must not be taken literally, but according to the meaning; therefore where the letter is until he, &c. or his assignee shall fully and wholly have levied the whole debt or damages; if he hath assigned several parces to several assignees, yet all they shall have the land but till the whole debt be paid.

Sixthly, where the words bo, for the which the fuld lands, &c. were deliverd in execution. A dfficolver conveyts lands to the king, who granteth the same over to A. and his heirs, to hold by fealty, and twenty pound rent, and after granteth the fealty to B. B. knoweth a