ent que celuy en le reveracion attorne al tenant a terme de vie par force de cel grant, ou autrement le grant est voide, par ce que celuy en le reveracion est tenant a terme de vie, &c.

Yet he shall not hold of the tenant for life during his life. Caufa patet, &c.

If it of it; therefore during that time he shall have no rent, service, wardship, releue, bar-

in, or the like, because these belong to the possession; but if the tenant die without heirs, the

tenant shall escheat unto the grantees, for that is in the right; and yet when the

feignior is revived by the death of the tenant, there shall be wardship: as if the tenant marry

with the feignioresse and die, his heirs within age, the wife shall have the wardship of the

heirs. Also in the case that Linneas here put, albeit the feigniorie be suspended but for life, yet some hold that he cannot grant it over, because the grantees took it suspended, and it was never in effect in him. But if the tenant make a luyfe for yeares or for life to the lord, then the lord may grant it over, because the feigniorie was in effect in him, and the service of the feigniorie is not suspended. But if the lord diffolve the tenants, or the tenant

enfeals the lord upon condition, then the whole estate in the feigniorie is suspended, and therefore he cannot during the suspension take benefit of any escheat, or grant over his feigniorie.

ALSO, if there be held and tenant, and the tenant holdeth of the lord by manner of services, and the lord grant his feigniorie to another; if the tenant

paya at least in kind or in kind for any parcel of any of the services to the grantees, this is a good attachment, of and for all the services, albeit the intent of the tenant was to attend upon for this parcel, for that the feigniorie is intire, although there bee divers man-

H E R E it appea-

ARMING per Frista.

ARMING per Frista.

The paragraph in L. and M. not Roh. **This paragraph not in L. and M. 1699 Roh.**

*et fier en et added L. and M. and Roh.*
Lib. 3. Cap. 10. Of Attornment.

Sect. 564, 565.

**Item**, si le seignor et tenant, et le tenant tient du seignior per plures maners des services, et le seignior grant les services a un auter per fine; si le grantor fuisse un si feire facias hors del meynfe fine pur ofuen parcel de les services, et ad judgement de recover, cel judgement est bond at-tornment en ley pur tous les services.*

Also, if there be lord and tenant, and the tenant holdeth of the lord by many kindes of services, and the lord grant the services to another by fine; if the grantor fust a faire facias out of the same fine for any parcel of the services, and hath judgment to recover, this judgement is a good attornment in law for all the services.

Sect. 565.

**Item**, si le seignor d'un rent service granta les services un auter, et le tenant at-torna per un denier, et puis le grantor disafraine pur le rent arere, et le tenant a laifit refecous; en ce cas le grantor n'avera affife del rent, forque breie de refecous, por eoe que le done del denier per le tenant ne fuit forque per vey d'attornment, &c. Mes si le tenant avoit done a le grantor le dit done come parcel de le rent, ou un maile ou un farthing per vey de

* See 2. Com. 211. 4. Ind. 209.
Lib. 3.  Of Attornment.  Sect. 566.

Sect. 566.

ITEM, if they pay for many joint tenants who hold by certain services, and the feignor grants a new service, and one of the joint tenants attorn to the grantee, this is as good as if all had attorned, for that the feignory is entire, &c.

ALSO, if there be a good attornment, and alfo is a good feoff to the grantee of the rent; and then upon such refusal the grantee shall have an affife, &c.

HEREUPON is to be offered a diversification between money given by way of attornment, and where it is given as parcell of the rent by way of feoff of the rent. For albeit the rent he not due before the day, yet a payment of parcell of the rent before-hand is an actual feoff of the rent to have an affife. And fo is it if he give an ox, a horse, a sheep, a horse, or any other valuable thing in name of feoff of the rent before-hand, this is good. And therefore a payment in name of feoff is more beneficial for the grantee, because that is both an actual feoff and an attornment in law; and yet being given before the day in which the rent is due, it shall not be abated out of the rent. So as to give feoff of the rent, it is taken for part of the rent; but as to the payment of the rent it is accounted as part of the rent; and the reason of the diversification, for that to come to rights or duties are ever taken favourably. Here also appeareth that there is an actual feoff, or a feoff in deed of a rent, whereas (as Litton here speaks) an affife doth fur; and a feoff in law which the grantee hath by attornment before actual possession. (1)

HERE is to be offered what manner of tenants shall attorn to the grant. And if he, (1) there be two or more joint tenants, and one of them attorn, it is sufficient; for, as it hath been often said, there cannot be an attornment in part. And albeit there is great authority against Litton, yet the law hath been adjudged according to Litton's opinion, as it hath been seen in other of his cases where they have come in question: and as it is of an attornment, so it is of feoffs; a feoff of a rent by the hands of one joint tenant is good for all, and a feoff in part of the rent is a good feoff of the whole.

(1) If the tenant die, he hath his estate may attorn at any time. If the tenant grant over his estate, his assignee may attorn. (2) If an infant hath lands by purchase or by descent, he shall be compelled to attorn in a par que foramin, and no affidavit to the infant; for when he cometh to full age, he may declare, to hold of him, or he may be held by the tenant; for there should be a greater and whole for the lord if the attornment of a infant should not be good, for he should lose the services in the mean while.

If an infant be a tenant, he shall be compelled to attorn in a good juris clausus. The attornment of an infant to a grant by deed is good, and that binds him, because it is a law full act, albeit he be not upon that grant by deed compellable to attorn. Of baron and feoff Litton putteth many cases in this chapter.

(2) A man that is deeds and demesne, and yet hath understanding, may attorn by figures; (3) but one that is not capax mentis cannot attorn, for he that hath no understanding cannot agree to the grant.

What conveyances shall be good without attornments more shall be said in this chapter in this proper place.

(1) Vy

(2) Sec. 566.

(1) See sec. 566. L. and R. and Rob.

(2) Sec. 566.

(3) This is only to be understood of a rent at common law: but if the rent is limited, as an one under the statute: as if lands are conveyed by lease and subject to a rent, his bounty to the tenant that he may receive out of them an annual rent: the statute immediately excuses the use of the rent in it.
Sect. 567.

ALSO, if a man letteneth tenements for termes of yeares, by force of which lease the lessee is seised, and after the leseffor by his deed grant the reverson to another for termes of life, or in taile, or in fee; it behoveth in such case that the tenant for yeares atorne, or otherwise nothing shall passe to such grantee by such deed. And if in this case the tenant for yeares atorne to the grantee, then the freehold shall presently passe to the grantee by such attornment without any liverie of seisin, &c. because if any liverie of seisin, &c. should be or were needfull to bee made, then the tenant for yeares should be at the time of the livery of seisin out of his possesson, which should bee against reason, &c.

HERE Lithum having spoken of grants of seignories and rent charges, and rents fecke flowing out of land, here treateth of a grant of a reverson of land upon an estate for yeares; being this grant of the reverson must be by deed, and the agreement of the lessee for yeares requisite thereunto, the freehold and inheritance doe passe thereby, as well as by liverie of seisin, if it were in possesson: and the grant of the reverson by deed with the attornment of the lessee, doe countervaille in law a footbend by liverie, as to the passing of the freehold and inheritance.

A terme d'ans. [1] And yet a tenant by statute merchant, or tenant by statute staple, or by elec't, must also atorne; for the grantee may have a voies faiuse et compisacion, or tendre the money, &c. and discharge the land; and if the reverson be granted by fine, they shall be compelled to atorne in a quid juris clausus.

And if the executors that have the land until the debts bee paid must atorne upon the grant of the reverson, although they have not any eoname termes for yeares.

Sect. 568.

ALSO, if tenements be letten to a man for termes of life, or given in taile, saving the reverson, &c. if bee in

le
EN même le man- 
ner est, si terre soit 
† done en taile, ou leffe 
a un bene por terme 
devie, le remainder a 
a un auter, en fee, a 
ce hoys en remainder voile 
granter céi remainder 
'a un auter, &c. si le 
tenant de la terre at 
turne en la grande 
hor, doner le grant 
dette remainder follen, 
a auerment nemy.

IN the same manner is it, if land be granted 
in taile, or let to a man 
for terme of life, the re- 
mainder to another in 
fee, if he in the remain- 
der will grant this re- 
mainder to another, &c. if the tenant of the 
land attorne in the life 
of the grantor, then 
the grant of such a re- 
mainder is good, or 
otherwise not.

Let us therefore speak first of 
tenant for life; and yet in 
some cases albeit tenant for 
life hath granted over his 
estate, yet be still attorne. [a] 
As if tenant in dower or by 
the curtesy grant over his or 
her estate, and the heiress 
over the reversion, the tenant 
in dower or by the curtesy 
may attorne, because at 
the time of the grant made they 
were attorne to the heri 
in reversion, and the grantee

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Of Attornment.

But as to tenant in tail, note a diversitie betweene a quo juris clamat, and a quo reddidit autem adloci, or a per quem terrenus; for against a tenant in tail, no quo juris clamat lieth, as is aforefaid. But if a man make a gift in tail, the remainder in fee, and the seignioris or rent charge lying out of the land be granted by that, the conuise shall maintaine a per quem provicia, or a quo reddidit, and compel him to attorne; for herein his estate of inheritance is no privilege to him, for that a tenant in fee simple (as his estate was at the common law) is also compellible in these cases to attorne.

Sec. 570.

P. 12. E. 4. Et la est tenus per tout le court, que tenant en tail ne ferra ardet d'attourner, mer s'il attournra gratis, c'est affets bone.

THIS is added to Litchelm, and therefore though it be good law, and the booke truly cited, yet I passe it over.

Sec. 571.

ET E M, si terre soit leffe a un bone pur terme d'ans, le remainder a un auter pur terme de vie, refervant al leffour un certaine rent per an, et livrerie de seignier sur cee est fait al tenant pur terme d'ans, si celuy en le reverfion en cee cale grant la reverfion a un auter, et le tenant que cee en le remainder apres le terme d'ans, soy attournra, cee est bone attornment, et celuy a que cee reverfion est grant, pour force de tle attornment distroyera le tenant a terme d'ans pur le rent due apres tle attornment, content que le tenant a terme d'ans ne ungues attourngh a liege. Et la cause est, par cee que lou le reverfion est dependant sur l'estate del frantemenem, jugez que le tenant del frantemenem attournra par tle grant del reverfion.

ALSO, if land bee let to a man for years, the remainder to another for life, referring to the lessor for a certain rent by the yeare, and livernie of seignior upon this is made to the tenant for yeares; if hee in the reverfion in this cale grant the reverfion to another, and the tenant which is in the remainder after the term of yeares shall distrain the tenant for yeares, is a good attornment, and hee to whom this reverfion is granted, by force of such attornment shall distraine the tenant for yeares for the rent due after such attornment, albeit that the tenant for yeares did never attorne unto him. And the cause is, for that where the reverfion is depending upon an estate of freehold, it sufficeth that the tenant of the freehold doe attorne upon such a grant of the reverfion, &c.

SUPFF que le tenant del frantemenem attorna (1). Note, Litchelm faith not here, that the-tenant of the frantemenem ought in this case to attorne, but that it

* This paragraph not in L. and M. nor Rob.  
† &c. not in L. and M. nor Rob.  
‡ soy not in L. and M. nor Rob.

(1) Two reasons are given for this. One is, that the possession of the tenant for years, is the possession of the immediate freeholder.
Lib. 3. Of Attornement. Sect. 572, 573. 317

It succintis that he deth attorne. And I heard for James Dyer, chief justice of the common pleas hold, that in this case if the tenant for years did attorne, it would void the reversion; for reving the estate for years is able to support the estate for life, he shall binde him in the remainder by his attornment in respect of his estate and privitie.

Sect. 572.

ET est apercevo, que lou un leas a terme d'ans ou a terme de vie, ou done en taille, est fait a afeun home, refferant a tiel leffor ou doner un certaine rent, &c. si tiel leffor ou doner graunta fon reversion a un auter, et le tenant del terre attourn, le rent passa al grauntes, coment que en le fait del grant de reversion nul mention doit fait de le rent, pur ce que le rent est incident al reversion en tiel cafe, et nempe est converfo, &c. Car si bone viole graunter le rent en tiel cafe a un auter, refferant a liy le reversion del terre, coment que le tenant attourn a le grauntes, ece ferra forque un rent fecke, &c.

AND it is to be understood, that where a lease for years or for life, or a gift in tail, is made to any man, referring to such lessor or donor a certain rent, &c., if such lessor or donor grant his reversion to another, and the tenant of the land attourn, the rent passeth to the grantee, although that in the deed of the grant of the reversion no mention be made of the rent, for that the rent is incident to the reversion in such case, and not e converfo, &c. For if a man will grant the rent in such case to another, referring to him the reversion of the land, albeit the tenant attourn to the grantee, this shall bee but a rent fecke, &c.

Of this Lintoon hath spoken before in the chapter of Rents.

Sect. 573.

ITEM, si bone lefse terre a un auter pur terme de sa vie, et puis il confirme per son fait l'estate del tenant a terme de vie, le remainder a un auter en fee, et le tenant a terme de vie accepta le fait, donques est le remainder en fait en cefuy a que le remainder est done ou limite per mefme le fait. * Car per l'acceptance del tenantatorne de vie+de le fait, eca est un agreement de lay, et effant un atorneament en ley. Mes encore cefuy en le remainder n'avera afeun actio.

ALSO, if a man let land to another (Plowd. 25. b) for his life, and after hee confirmes by his deed the estate of the tenant for life, the remainder to another in fee, and the tenant for life accepteth the deed, then is the remainder in fact in him to whom the remainder is given or limited by the same deed. For by the acceptance of the tenant for life of the deed, this is an agreement of him, and so an atorneament in law. But yet hee in the remainder shall not have any action

* Car not in L. and M. nor Roth.
† de le fait not in L. and M. nor Roth.

Of waste nor other benefit by such remaynder, unless that hee hath the said deed in hand, whereby the remaynder was entailed or granted to him. And because that in such case the tenant for life perdware will retaine the deed to him, to his intent, that he in the remaynder should not have any action of waste against him, for that hee cannot come to have the deed in his possession, it will be a good and sure thing in such case for him in the remaynder, that a deed indented bee made by him which will make such confirmation, and the remaynder over, &c. and that which maketh such confirmation deliver one part of the indenture to the tenant for life, and the other part to him that shall have the remaynder. And then he by shewing of that part of the indenture may have an action of waste against the tenant for life, and all other advantages that he in the remaynder may have in such a case, &c.

HERE Lithuan putteth a case of a remaner wherunto an attornment is requisite. And this is the sixth example of an attornment in law.

Remaynder is au tier, &c. Of this sufficient hath beene said in the chapter of Confirmation, Sect. 575.

Si non que il avoit le fait en poigne. And albeit he hath no remedy to come to the deed during the life of tenant for life, yet because he is privie in effect, he shall not maintain an action of waste without shewing the deed; but when the remader is once expectated, he shall not need to shew the deed.

Il ferra bone et faire chasfe, &c. Hereby it appeareth how necessary it is to use learned advice in such conveyance, for thereby shall be prevented many questions, and not to follow the advice of him that is experimented only. For as in physick, Nullem medicinam of idem annuis, so in law one forme or prudent of conveyance will not fit all cases.

Sect.

* rettigue—reftiver, L. and M. and Roh.
* et per eco added L. and M. and Rohs
* effere chasfe not in L. and M. me Roh.
Lib. 3. Of Attornment. Sect. 574.

Sect. 574.

Also, if two joyn-tenant be, who let their land to another for term of life, and to their heirs a certain yearly rent; in this case if one of the joyn-tenants in the sev'rsion releaseth to the other joyn-tenant in the same sev'rsion, this releas is good, and he to whom the releas is made shall have only the rent of the tenant for life, and shall only have a writ of waste against him, although he never attorned by force of such releas, &c. And the reason is for the privitie which was between the tenant for life and them in the sev'rsion.

For life shall not be compelled to attorne before a qui a jure clamat upon a grant of a sev'rsion by fine helden in the king's chief without licence; but the reason hereof is not because the tenant for life might be charged with the fine, for his estate was more ancient than the fine levied, but because the court will not suffer a prejudice to the king, and the king may seize the sev'rsion and rent, and so the tenant shall be attendant to another. Also it is a general rule, that when the grant by fine is defeasible, there the tenant shall not be compelled to attorne. As if an infant leive a fine, this is defeasible by writ of error during his minority, and therefore the tenant shall not be compelled to attorne.

So if the land be helden in ancient demesne, and he in the sev'rsion leived a fine, the tenant should not be compelled to attorne, because the estate that pulles is reversible in a writ of defect. But now the statutes of 4. H. 7, and 32. H. 8. having given a further strength to fines to breathe the issue in tuile, the repeal of the common law being taken away, the tenant in this case shall be compelled to attorne, as it was adjudged (*) in justice Windham's case.

If an alienation be mortmaine, the tenant shall not be compelled to attorne, because the lord paramount may dictate it.

(*) Lib. 5. fol. 86. Justice Windham's Case.

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Sect. 575.

EN mefme le maner, et pur meffe le caufe, si, lou home leffa terre a un auter pur terme de vie, le remainder a un auter pur terme de vie, refevant le reverfion ad leffour; en eft caufe, eley en le reverfion refffa a ce-luy en le remainder et a fez heires tout fon droit, &c. donques eley en le remainder ad un fee, &c. et il avera un brief de waft envers le tenant a terme de vie fanni afez un attornment de luy, &c.

IN the same manner, and for the same cause, let there be a tenant to another for life, the remainder to another for life, referring the reversion to the lessor; in this case, if he in the reversion release him to the remainder and to his heirs all his right, &c. then he in the remainder hath a fee, &c. and he shall have a writ of waft against the tenant for life without any attornment of him, &c.

This needeth no explication.

Sect. 576.

THERE have been now in all seven examples, that Litle-ten puttheth of an attornment in law, and here he putteth two cafes alio of a notice in law. And the reason of both thes are here renderd by Littlen. First for the notice, Littlen faith that the leffe flual not by law be mifconfaunt of the feoffments that were made of and upon the same land. And the reason of the attornment is, because the whole fee simple putth by the feoffment, and the leffe by his regresse leaveth the reverfion in the feoffe, which (faith Littlen) is a good attornment. The same law is of a tenant by flute merchue or duple, or reges. And so it is of a leaf for life, as Littlen here faith; and so it was suggested in Brabantiscus’s cafe, and after in the desire of Paul’s cafe in the

ITEM, si bone leffa terres ou tenements a un auter pur terme des ans, et puis il ouffa fon termour, et ont enoffa un auter en fee, et puis le tenant a terme d’ans enter fur le feoffe, en claimant fon terme, &c. et puis fait waft; en eft cafe le feoffe avera per la ley un brief de waft envers lui, etuncore il n’atonna pas un a lui.

Also, if a man lett lands or tenements to another for term of years, and after he oufth his termor, and thereof enoffe another in fee, and after the tenant for years enter upon the feoffe, claying his term, &c. and after doth waft; in this case the feoffe shall have by law a writ of waft against him, and yet hee did not attorne unto him. And the cause is, as I suppose, for that he which hath right to have lands or tenements for years, or otherwise, should not by law bee mifconfaunt of the feoffments which were made of and upon the same
Of Attornment.  
Sect. 577.

lands, &c. And inasmuch as by such feoffment the tenant for years was put out of his possession, and by his entry he caused the reversion to be due to him to whom the feoffment was made, this is a good attornment; for he to whom the feoffment was made, had no reversion before the tenant for years had entered upon him, for that he was in possession in his demesne as of fee, and by the entry of the tenant for years, he hath but a reversion, which is by the act of the tenant for years, sicilicet, by his entry, &c., per non entry, &c.

Sect. 577.

The same law is, as it seemeth, where a lease is made for life, having the reversion to the lessee, if the lessee dons any act of feoffment or letter, and make a feoffment in fee, if the tenant for life enter and make waife, the feoffees shall have a writ of waife without any other attornment, for they shall have a writ of waife without any other attornment, because the tenant for life has not an estate for life in the fee.

[1] In a man make a leafe for life, and then grant the reversion for life, and the lessee attorns, and after the leffeor doth the leffeor for life, and make a feoffment in fee, and the lessee re-enters, this shall leave a reversion in the grantor for life, and another reversion in the feoffees, and this is not an attornment in law of the grantor for life, because he doth no act, nor attend to any which might amount to an attornment in law. Be it ever so with an attornment in deed. 

Neither hath the grantor for life the land in possession, so as he may well be mis-constituted of the feoffment made upon the land, and so out of the reason of Littleness. But in a reversion in fee doth pertain to the feoffees.

Sect.

* Mis hors de son possession, et per son entree il causa le reversion d'offe a cley a que le fefoyme fait ans in L. & M. non Rts., & en pffomment de fer, L. and M. and Roht.

[1] In these cases, the tenant for life enters only for a partial estate; he therefore only partially defects the operation of the feoffment; to much of the fee as he does not so far, necessarily remains in the feoffees.
IN the same manner; and for the same cause, is it, where a man letteth land to another for life, the remainder to another for life, reserving the reversion to the lessee; in this case if hee in the reversion releaseth to him in the remainder and to his heirs all his right, &c. then hee in the remainder hath a fee, &c. and hee shall have a writ of waft against the tenant for life without any attornment of him, &c.

This needeth no explication.

* lhsime*—lhs, L. and M. and Roh.  
† a by not in L. and M. nor Roh.  
‡ ou autrement not in L. and M. nor Roh.
Of Attornment.

Sect. 577.

lands, &c. And inasmuch as by such feoffment the tenant for years was put out of his possession, and by his entry he caused the reversion to be to him to whom the feoffment was made, this is a good attornment; for he to whom the feoffment was made, had no reversion before the tenant for years had entered upon him, for that he was in possession in his demesne as of fee, and by the entry of the tenant for years, he hath but a reversion, which is by the act of the tenant for years, seilicet, by his entry, &c.

Sect. 577. The same law is, as it seemeth, where a lease is made for life, saving the reversion to the lefior, if he lease is made for life, saving the reversion to the lefior, if the lefior, if the lefior disafford the lease, and make a feoffment in fee, if the tenant for life enter and make waife, the feoffor shall have a writ of waife without any other attornment, causa quia supra, &c. (1)

If a man make a lease for life, and then grant the reversion for life, and the lefior, and after the lefior disafford the lease, and make a feoffment in fee, and the lefior enters, this shall leave a reversion in the grantee for life, and another reversion in the feoffor, and yet this is an attornment in law of the grantee for life, because he hath no act, nor affect to any which might amount to an attornment in law. Et si hic alter alterius actum non debet. Neither hath the grantee for life the land in possession, so as he may be well entitled to the feoffment made upon the land, and so out of the region of Lisibon. But yet the reversion in the whole pufhe to the feoffor.

(1) In those cases, the tenant for life enters only for a partial time, he therefore only partially defects the operation of the feoffment so much of the fee as he does not defeat, necessarily remain in the feoffor.
ITEM, if les faij fait par terme de vie, le remainder a un auter en le tale, le remainder aufer a les droit heires le tenant a terme de vie; en eft cafe, si le tenant a terme de vie grant a remainder en fee a auter per son fait, cel remainder maintenent paffa per le fait sans aucum attournement, &c. car si aucum doit attorne en eft cafe, ceo ferroit le tenant a terme de vie, et en vain ferloit ce il attourneroit fur fon grant demesne, &c.

En vain ferroit, &c. Quod eum ex drae feci non requiris. Leo eft regiofigatoque, quod iure t fest sed misit, et necessario, et contra prohito; et argumentis de den, from hence are forbidden in law.

ITEM, si fuit seignior et tenant, et le tenant tient del seignior per certaine rent, et services de chioader, si le seignior granta les services de fon tenant per fine, les services sont maintenent en le grantee per forc de fine; nes uncere le seignior ne pojet pas disfere my per aucum parcel de les services sans attournement; nes sf le tenant devia (son heire dem age) le seignior avera le gard del

ALSO, if there be lord and tenant, and the tenant holdeth of the lord by certain rent, and knights service, if the lord grant the services of his tenant by fine, the services are presently in the grantee by force of the fine; but yet the lord may not disfrene for any parcel of the services, without attournement: but if the tenant dieth, his heire within age, the lord shall have the wardship corps

* &c. not in L. and M. nee Roll.

(1) The observatory of Mr. Douglas upon this point (see to page 546 of his Reports) deserves the reader's most serious attention.

corps del boire, et de ses terres, &c. comen qu il neunique attor-
naiz, par ce que le seigniorie fuit en le grantee mantenient per
force del fine. Et ay en tien cas, si le tenant morut sans heire, le
seignior avera les tenements per
way d'escheat.

HERE Little en beginneth to show what advantages the conuise of a fine may take before
attornment, and what not.

[6] First, he cannot diffeyue, because an avoirole is in lies of an action; and thereupon
privilege is requisite. So likewise, and for the same cause, he can have no action of waft,
not writ of curteis, al commissary legam, or in consimil raff, or in introit proiw, writ of es-
cone and services, nor writ of waris, &c. (1)

But if a man make a lease for yeares, and grant the receptor by fine, if the leftie be oufled,
and the conuise defied, the conuise, without attornment, shall maintaine an alliie; for
this writ is maintaine against a stranger, whose there needeth no privilege. And such things
as the lord may feile, or enter into without firing any action, there the conuise, before any
attornment, may take benefit thereof; as to leftie a ward or heriot; or to enter into the lands
or tenements of a ward; or escheat to him; or to enter for an alliacion of tenant for life
or yeares; or of tenant by statute merchant, shippel, or dedit, to his discharge.

Sect. 580, 581, 582.

EN misme le marn-
er et, si home
granta le reversion
de son tenant a terme
de vie a un autre
per fine, le reversion
pertient maintenant al
grantee per force del
fine, mes le grantee
jammes n'auver action
de waft sans attorn-
ment, &c.

IN the same manner
it is, if a man grant
the reversion of his
tenant for life to an-
other by fine, the re-
version maintain pat-
feth to the grante by
force of the fine, but
the grantee shall ne-
ever have an action of
waft without attorn-
ment, &c.

IT is said in our books,
that if tenant for life
have a privilege not to be
impeachable of waft, or any
other privilege, if he doth
attorne without being his
privilege, that he hath sold
it; which is to be under-
stood, where he attorne in
a void part; shamor brought
by the conuise of a fine, that
if he claimeth not his privi-
lege, but attorne generally,
his privilege is lost, for that
the writ supputath him to be
a bare tenant for life; and
by his general attorn-
ment, according to the writ,
he is barred for ever even
that any privilege but a bare
nate for life. But if upon a
grant of the reversion by deed,
the tenant for life doth at-
torne, he looth no privilege;
for there can be no condition or
bare by the attornment
in fata; and so it is of an at-
torne in law. As if the
leftie difficite the leftie for
life, and make a feastment
in fee, and the leftie receiveth;
this is an attornment in law,
which shall not prejudice him

Sect. 581.

MES uncere fo le
tenant a terme
de vie alienat en fee,
le grantee peut enter,
* &c. pur ceg que
le reversion suit en lay
per force del fine, et
tiel alienation suit a
son diheritance.

BUT yet if the tenant
for life alieneth
in fee, the grante
may enter, &c. because
the reversion was in
him by force of the
fine, and such aliena-
tion was to his dihe-
ritance.

* &c. not in L. and M. nor Rol.

(1) The diffusion in these cases seems to be, that the grante is intitacted, before attornment, to what the lord may fide; but
not to any thing which lies in action.
Sect. 582.

But in this case where the lord granteth the services of his tenant by fine, if the tenant die (his heir being of full age) the grantee by the fine shall not have relief, nor shall ever discourse for relief, unless that he hath the attornment of the tenant that died: for of such a thing which lieth in diffrette, wherupon the writ of replevin is sued, &c., a man must and ought to avow the taking good and rightful, &c., and there ought to be an attornment of the tenant, although the grant of such a thing be by fine: but to have the wardship of the lands or tenements so held during the nonage of the heir, or to have them by way of echeate, there needs no diffrette, &c., but an entry into the land by force of the right of the seigniorie, which the grantee hath by force of the fine, &c. Sic vide diversitatem.

Alien en fer, &c. Of this sufficient hath been said in the next precedent Section.

Numera relief, &c. Of this sufficient hath been said in the next precedent Section.

(see note to L. and M. nov Rob.) + avoit l'attournement—sai si attournement, L. and M. and Rob. § &c. added L. and M. and Rob.
ITEM, if it be seignior, mesne, and tenant, and the mesne grantee per fine the services of his tenant a\textsuperscript{3} \textsuperscript{4} to another in fee, and after the grantees die without heir, now the services of the seignior shall come and escheat to the lord paramount by way of escheat; and if afterwards the services of the seignior be held in this case which was lord paramount may disire the tenant, notwithstanding that the tenant did never attorne: and the cause is, for that the seignior was in deed in the grantees by force of the said fee, and the lord paramount may avow upon the grantee, because in deed he was his tenant, albeit he shall not be compelled to this, &c. But if the grantor in this case had died without heir in the life of the grantee, then he should be compelled to avow upon the grantee; and also in as much as the lord paramount doth not claim the seignior by force of the grant made by fine levied by the mesne, but by virtue of the seignior's paramount, viz. by way of escheat, he shall avow upon the tenant for the services which the mesne had, &c. albeit that the tenant did never attorne.

Here Listroom putth the case where one that claimeth under a comittee by fine may disannul or maintain any action, albeit there was never any attornment made to the comittee, or to him that hath his estate.

And here is a diversitie betwixen an act in law that giveth one inheritance in lieu of another, and an act in law that conveyeth the estate of the comittee only. Of the former Lirmone here putth an example of the escheat of the seignior which crowneth the seignior's paramount; and whereas reason would that the lord by this act in law should have as much benefit of the seignior's escheat, as he had of the seignior that is drowned; and the rather for that the law cutteth it upon him, and he hath no remedy to compell the tenant to attorne.

* & not in L. and M. nor Rob. || sic\textsuperscript{5} & not in L. and M. nor Rob.
\textsuperscript{3}\textsuperscript{4} & not in L. and M. nor Rob. || sic\textsuperscript{5} & not in L. and M. nor Rob. || sic\textsuperscript{5} & not in L. and M. nor Rob.

\textsuperscript{3} & sic\textsuperscript{5} & not in L. and M. nor Rob. || sic\textsuperscript{5} & not in L. and M. nor Rob. || sic\textsuperscript{5} & not in L. and M. nor Rob.

Another reason hereof Litterum here yealdeth, because the lord commeth to the me
nautie by a fornicative carnal, and therefore there needeth no atternent. (c) As if le
 fees for life be of a number, and he thredeth his estate to his leftee, there needeth no at
ternement of the tenant's, because the leffor is in by a title paramount. But if the com
fuse of dieth, and the law calleth his feignor upon his heire by descent, he shall not be in any better
state than his ascotor was, because he claimeth as heir mostly by the confiscate.

So it is (as hath beene told) if the confiscate of a fine before atternent bourneth and
selleth the confiscate by deed indented and sealed, the bourneth shall not disfaine, because
the bourneth, from whom the confiscate moveith, had never usuall possession.

So and for the same reason if a reverson be granted by fine, and the confiscate before at
ternent dieth, the tenant for life and make a testament in fee, and the leftee re-entereth, the
feoffer shall not disfaine.

Sect. 584.

EN mene le ma
ner es, by le re
version d'vn tenant a
termes de vie soit grant
per fine a un autre en
fee, et le grantee apres
morsuy sans heire, ore
le feignor ad le re
version per voy d'echate;
ct si apres le tenant fait
waif, le feignor
aueure briefe de waif
envers leuy, vient con
trigesvant que il ne un
ques attorne, * caute
qua supra. Mes lau un
honne clame per forse
del grantu fait per fine
+ ilicilic, come heire,
on ou come affijnec, &c. la
il ne disficerera + ne a
vovera, ne aueure action
de waif, &c. sans attor
nent.

IN the same manner it
is, where the reverson
of a tenant for life is
granted by fine to anot
her in fee, and the
grantee afterwards dieth
without heir, now the
lord hath the reverson
by way of confiscate; and
if after the tenant ma
keth waif, the lord
shall have a writ of
waif against him, not
withstanding that he ne
ver attorneth, cautel qua
supra.

But where a man
claimeth by force of the
grant made by the fine,
false, as heire, or as affi
nence, &c. there hee
shall not disfaine nor awa
ce, nor have an action of
waif, &c. without at
ternent.

Sect. 585.

IF EM, en ancient boroughs
et cities, sou terres et tenu-

† Or, added L. and M. and Rob.
‡ or montera not in L. and M. nor Rob. see in MSS.
Of Attornment.

Of Attornment.

mens deins meme les bor-
roughes et citiez sont deviseables
per testament per custome et use,
&c. si en tiel s borough ou citie
home fait scife de rent service, ou
der rent charge, et devise cest rent
ou service a un auteur per son testa-
ment et morra; en cest cas celeuy
c. a que tel devise est fait, doit
difierire le tenant par le rent ou
service adober, comment que le te-
nant n'attornia pas.

Lib. 3.

HERE both Littleness put a case where a man may have a feignory, rent, seizure, or
remainder meerely by the act of the perty, and may disfraine, and have any action
without any attornment, and that is by devise of lands deviseable by custome when Littlesse
wrote, by the last will and testament of the owner.

Sect. 586.

EN meme le maner est, lou
home telz tiels tenements
devisables a un auteur per terme
de vies, ou per terme d'ans, et de-
visa le reverison per son testament
a un auteur en fee, ou en fee taile,
et morrau, et puis le tenant fait
moi, celeu a que le devise fait
faut avoir breve de moit, comment
que le tenant ne unique attornia.

Et la cause est, per ce que la va-
lunt le devisyor fait per son tes-
tament ferra performe solongue
l'entent del devisyor; et si l'ef-
fait de cest girroit sur l'attourn-
ment del tenant, il donques par
cafe le tenant ne voyle unique
attornier, et donques le volont
del devisyor ne ferroit unique per-
forme, &c. et par cest le devise
diffrainera, &c. ou avera esto ione
de moit, &c. sans estonnement. Car
si home devise tiels tenements a un
auteur per son testament, habendum
fibi imperpetuum, et morrau, et
le devise extrer, il ad fee simple,

nements within the same bor-
roughes and cities are devisable
by testament by custome and use,
&c. if in such borough or city a
man be seized of a rent service, or
of a rent charge, and deviseeth such
rent or service to another by his
testament and dieth; in this case,
he to whom such devise is made,
may disfraine the tenant for the
rent or service aere, although the
tenant did never attorne.

Sect. 586.

IN the same manner is it, where
a man letteth such tenements
devisable to another for life, or
for yeares, and deviseeth the rever-
sion by his testament to another
in fee, or in fee taile, and dyeth,
and after the tenant committs waife,
he to whom the devise was made
shall have a writ of waife, although
the tenant doth never attorne.

And the reason is, for the will
of the devisor made by his testa-
ment shall bee performed accord-
ing to the intent of the devisor;
and if the effect of this should
lie upon the attornment of the
tenant, then perchanse the tenant
would never attorne, and then the
will of the devisor should never
be performed, &c. and for this
the devisee shall disfraine, &c. or
he shall have an action of waife,
&c. without attornment. For if a
man deviseeth such tenements to an-
other by his testament, habendum
fibi imperpetuum, and dieth, and the
causa

§ cas added L. and M. and Roh.  † &c. added L. and M. and Roh.  † &c. not in L. and M. nor Roh.

caus quâ supra; * uncere & fri fait de feoffment us it est & fait a luy per le defavor en fa vie de mesmes les tenements, habendum fi bâ imperpetuum, et livery de sejinn fur cee faut fait, il n'averoit effete forse for par terme de fa vie.

Both this and the precedent case stand upon one and the same reason, which Lisleton here yeald, viz., because that the will of the defavor expressid by his yealdment shall be performed according to the intent of the defavor; and if such not lie in the power of the tenant or lessee to frustrate the will of the defavor by denying his attornment. Here Lisleton mentioneth a maxime of the common law, viz. "sibi ultima voluntas testatoris ei perhibenda fecundum ea re intentionem suam," et, "Reipublicae intersit interjus similes ommesificantur rara habetur.

Testamentum, i.e. testamentum, which is made sullu profectis natura pericia, ut quod accipiatur testamentum mortuus. Omne testamentum cura conformationum.

Cor fi borne defa ts tenements a un auter, &c. Here Lisleton putth a case where the intent of the feather shall be taken, viz., where a man by defavor shall have a fee simple without the words (heir); and here Lisleton putth the diversity between a will and a yealdment.

Now by the statutes of 32. and 34. H. 8. (as hath borne said in the chapter of Burgage) finds, tenements, and hereditaments are devidable, as by the said act. doe apparrce.

Sect. 587.

ITEM, fi borne feith d'un mannor quel est parcel en demesne et parcel en servities, et ent fait diffisexe, mes les tenants que reigne-noi del mannor ne ente attournent § a le diffeser; en celle cas, cement le diffeser morfis feith, et jon boire fait eius per divers, &c. uncere poi le difeseer difereine per le rent avere, et aver les servities, &c. Mes fi les tenants vioindron al diffeser, et dont. Nous desciegnamus vosstre tenants, &c. ou auter attournement a hy sefoyent, &c. et puis le diffeser morfis feith, donque le diffeser ne poi difereine per le rent, &c. par ce que tout le manor defendoit al boire le diffeser, &c.

ALSO, if a man bee seithed of a mannor which is parcel in dememne and parcel in servitys, and is thereof diffisexe, but the tenants which hold of the mannor doe never attorne to the diffeser; in this case, albeit the diffeser dieth seithed, and his heir is in by di- sent, &c. yet may the diffisexe disfrenie for the rent behind, and have the servities, &c. But if the tenants come to the diffeser and say, We become your tenants, &c. or make to him some other attornment, &c. and after the diffeser dieth seithed, then the diffisexe cannot disfrenie for the rent, &c. for that all the manor desendeth to the heir of the diffeser, &c.

LISLETON having spoken of estates gained by lawful conveyances, saith now speake of estates gained by wrong; and here putth a case of a disavow of a manson, where it appeareth, that the diffeser cannot disfrenie the lord of the rents or servities without the

* et added L. and M. and Rbh.
† §—de L. and M. and Rbh.  
‡ v i f | §—sen L. and M.  
§ n le—de L. and M. and Rbh.
the attornment of the tenants to the disseisor; for being an attornment is requisite to a
feoffment and other lawful conveyances, to fortiori, a disseisor or other wrong doer shall not
gaine them without attornment. The like law is of an abtor and an intruder. But albeit
the disseisor hath once gotten the attornment of the tenants and payment of their rents,
yet may they refuse afterwards for avoiding of their double charge. And here the attorn-
ment of the tenant of a manor to a disseisor of the demesnes shall dispossid the lord of
the rents and services parcel of the manor, because both demesnes, rents and services make
but one entire manor, and the demesnes are the principall; but otherwise it is of rents and
services in gross, as in this next Section our author teacheth us.

Sect. 588.

Mes 1. un tient de moy per rent service, le quel es un service en grosse, et n'est per rea-
son de mon mannor, et un autre que nul droit ad, a claimer le rent, a recevoir et prent mesine le rent
de mon tenant per cobbizun de difierre, ou per auter forme, et disposoit moy per tiet prender de
rent; comme que tiel disseisor me-
suis jist fisit en pernant de rent,
uncore apres sa mort jee puissi
bien disfrenir le tenant par le
rent que jist aoderer devant le
1 deceau del disseisor, et auu ap-
res son deceau. Et la cause est,
que ceo que tiel disseisor n'est pas
moi disfrenir for que a ma elec-
tion et ma volont. Car comen
que il prent le rent de mon tenant,
et cee jee puissi a touts faits disfrenir mon tenant par
le rent arre, jist que il est
moi for que jee voile suffre
ver le tenant, ebre per tant de
temps arre per pater a moy meme
le rent, cee.

But if one holdeth of me by rent service, which is a service
in gross, and not by reason of my mannor, and another that hath no
right, claimeth the rent, and receives and taketh the same rent of my ten-
ant by coercion of disfranchise, or by o-
ther forme, and disfrench mee by
such taking of the rent; albeit such
disseisor dieth so seised in taking
of the rent, yet after his death I
may well disfraine the tenant for
the rent which was behinde be-
fore the decease of the disseisor,
and also after his decease. And the
cause is, that for such disseisor is
not my disseisor but at my election
and will. For albeit he taketh the
rent of my tenant, &c. yet I may at
all times disfraine my tenant for
the rent behinde, so as it is to mee
but as if I will suffer the tenant to
bee so long time behinde in pay-
ment of the same rent unto me,
&c.

Sect. 589.

Car le payment of mon te-
nant a un auer a que il ne
doit pas payer, n'est pas disfaffa
a moy, ne ostia moy pas de mon
rent sans un volunt & et ma elec-
tion, &c. Car comen que jee puissi
soy aver affise ensors tield per-

For the payment of my tenant to another to whom hee ought
not to pay, is no disaffain to me, nor
shall ouf me of my rent without
my will and election, &c. For al-
though I may have an affis against
such pennon, yet this is at my elec-

not,
or, according to my election, whether I will take him as my seignior, or no. So such discounts of rents in gross shall not out the lord of his diocese, but at any time he may well divide him for the rent behinde, &c. And in this case if after the division of him which so wrongfully took the rent, I grant by my deed the service to another, and the tenant attorned, this is good enough, and the services by such grant and attornment are presently in the grantee, &c. But otherwise it is where the rent is a parcel of a manor, and the diocese dieth feoffed of the whole manor, as in the case next before is said, &c.

**Sect. 590.**

likewise a parcel of a manor, whereas he had spoken before, and a rent service in gross. For a man cannot be divided of a rent service in gross, rent charge, or rent feoff, by attornment or payment of the grant to a stranger, but at his election; for the rule of law is: *Nemo redditiun ulterius invisa demino percipere aut possidere possit,* and our author hath before taught us what be differences of rents services, rents charges, and rent fees, and payment to a stranger is none of them, but at the lord's election, as our author hath taught.

Thus is the value of my rent. But if the diocese bring an action against such a person, then he doth admit himself out of possession.

**Sect. 590.**

**IT E M.** So as sue fèdèle d'un manor, parcel en demefue, et parcel en service, et j'ai donc certaine aeries del terre, parcel de demefue de menfie le manor, a un
Of Attornment.

another in tail, yealding to mee, and to my heires a certain rent, &c. if in this case there is a diffi-

cessor, the manor, and all the tenants

attorne and pay their rents to the
diffesor, and also the said tenant

in tail pay the rent by me referred

to the diffesor, and after the
diffesor die dieth seised, &c. and

his heire enter, and is in by dif-
cent, yet in this case I may well dif-

treyne the tenant in tail, and his

heires, for the rent by me referred

upon the gift, &c. as well the rent

being behinde before the dif-
cent to the heire of the diffesor,
as also for the rent which happenth

to be behind after the same dif-
cent, notwithstanding such dying seised

of the diffesor, &c. And the rea-
on is, for that when a man giveth

lands in tail, paying the rever-
sion to himselfe, and hee upon the

same gift referred to himselfe a

rent or other services, all the rent

and services are incident to the

reversion; and when a man hath a

reversion he cannot be outed of

his reverson by the act of a

stranger, unless that the tenant

be outed of his estate and possession, &c. For as long as the ten-
nant in tail and his heires con-
inue their possession by force of my

gift, so long is the reverson in me

and in my heires: and in as much

as the rent and services referred

upon such gift be incident and de-

pending upon the reverson, who-

soever hath the reverson, shall

have the same rent and services,

&c.
In the same manner is it, where I let parcel of the demesne of the manor to another for term of life, or for term of years, rendring to me a certain rent, &c., albeit I be dictated of the manor, &c., and the dictier die feited, &c., and his beire be in by decent, yet I may distrain for the rent arere ut supra, notwithstanding such decent; for when a man hath made such a gift in taile, or such a lease for life, or for years, of parcel of the demesne of a manor, saving the reverson to such donor or leffer, &c., and after he is dictiered of the manor, &c., such reverson after such decent is not fevered from the manor in deed, though it be not severed in right. And so thou mayst fee (my sone) a diversitie, where there is a manor parcel in demesne and parcel in services, which services are parcel of the same manor not incident to any reverson, &c., where they are incident to the reverson, &c.,

[...]

Hence Libron putth a diversitie betweene rents and services parcel of a manor (whereof he had spoken before) and rents and services incident to a reverson parcel of a manor.

And the reason of this diversitie is, for that as long as the donee in taile, leffe for life, or leffe for years, are in possession, they preferre the reverson in the donor or leffer; and so long as the reverson continuie in the donee or leffer, so long do the rents and services which are incident to the reverson belong to the donor or leffer. Neither can the donor or leffer be put out of his reverson, unless the donee or leffe be put out of their possession; and if the donee or leffe be put out of their possession, then consequently is the donor or leffer put out of their reverson. But if the donee or leffe make a regreffe, and regaine their estate and possession, thereby doe they in faites reviver the reverson in the donor or leffer.

And here it is to be observed, that when a man is made of a manor, and makeh a gift in taile, or leffe for life, &c., of parcel of the demesne of the manor, &c., the reverson is part of the manner, and by the grant of the manor the reverson shall passe with the attornment of the donee or leffe. But if the lord make a gift in taile, or a lease for life of the whole manner, excepting Blachts Ace, parcel of the demesne of the manor, and after he granteth away his manner; Blachts Ace that is not passe; because during the estate taile, or lease for life,
Of Discontinuance. Sect. 592.

Discontinuance is an ancient word in the law, and hath divers significations, &c. But as to one intent it hath this significiation, viz. where a man hath alieneed to another certain lands or tenements and dieth, and another hath right to have the same lands or tenements, he may not enter into them because of such an alienation, &c.

All which is implied by the description of our author, and by the (Sic) in the end of this Section. I have added (proseply) by good warrant of our author himselfe, for Sedime 470. he utth discontinue for a deceasing or dispersing of a reversion, though the entie be not taken away.

This discontinue confeth in doing or suffering an act to be done, as hereafter shall appear. And where our author saith, that it hath divers significations, there is also a discontinue of procresse confining in not doing, where the procresse is not continued, concerning which, there is an excellent treatise in furtherance of justice in [1] 2. E. 6. and is well expounded in my Reports, and therefore need not here to be inferred.

There is another erroneous proceeding, and that confineth in misleading; as when one procresse is awarded instead of another, or when a day is given which is not legal, this is called a misdiscontinuance, and if the tenant or defendant make default, it is error; but if he appear, then the misdiscontinuance is falsed, otherwise it is of a discontinuance. But let us return to the discontinuance of estates in lands, whered Littell doth treat in this Chapter.

Signification. Here (as in many other places) it appeareth how necessary it is to know the significations of words.

And in this Chapter it appeareth, that when Littell wrote, the estate in lands and tenements stiilh have becre created five ways of wayes, as for bylent, by fine, by relive with warrantie, confirmation with warrantie, and by sufferings of a recovery in a messuage.

(1) Is to discontinue in general? — In note 1, p. 139, 2, it was observed, that in the case of a division, while the possession remaineth in the divider, it is a mere naked possession, unsupported by any right; and that the disseifie may reduce his possession, and put a total end to the possesion of the disdivider, by an entry upon the land, without any previous action; but that, if the disdivider die, the heir comes to the possession of the recovery by a lawful title. It is the same if the disseifier alienate the immeubles in a lawful title. But in this case, in the second and the third, he acquires a perfect right of possession which is to go good, even against the person disdivider, that he hath by his right to recover the possesion by entry, and can only recover it by an action in law. When the right of entry is in the law, and the party only may recover by action, the possession is said to be discontinuance.

This is a perfect division of the estate, and if the true owner of the tenement, not the act of the disdivider, but the heir upon the possesion of a disdivider, for the heir and issue of a disseifier immediately claim under a persona comitans in a wrongfull title, and their actions, though not defensible by entry, are immediately defeasible by action. But the actions of every person, whose tenement is so disposed, is said to be a discontinue, claims by a person having a lawful estate, and the estate of the disseifier is insupportable during the life of the disdivider. It should also be observed, that a discontinue extends to those cases only, where a person is dispossessed of an estate of freehold; and where, though he has lost his right of entry, he can still recover the possesion by action. At the common law, if there was a term for years, and the tenant of the freehold suffered a common recovery by term, it was good (but to the term; for, not having the freedom, he could not take the recovery. By that title or interest, if any were lost, was dispossessed of the possesion by or under the possesion of the latter term, and the tenant of the freehold suffered a common recovery by term, it was good to the term; for, not having the freedom, he could not take the recovery. By that title or interest, if any were lost, was dispossessed of the possesion by or under the possesion of the latter term.
SICOME un abbe feijse de certame terres ou tenements en fee, et alienari mootem les terres ou tenements a un autter en fey, ou en feye talle, ou par terme de vie, et a puis l'abbe mort, son feiccelor ne poiz entrer en les dits terres ou tenements, consent que il ad droit euze aver come en droit de son meynon, mes il eft mit a un action de recouverer mementes les terres ou tenements, quel eft a pelle, breve de ingrefu fine afferfu capituli, etc.

M. 41. E. 4. 86. (Plac. 566.)
Abl. 89. 4. (Poll. 594.)
(R. Rep. Magdalen College's Colle.)

See more of this matter hereafter in this chapter Sect. 696. and before Sect. 788.

Also, if a man be seited of land as in right of his de

* puiu not in L. and M. nor Reh.

† &c. not in L. and M. nor Reh.

SICOME un abbe feijse de certame terres ou tenements en fee, et alienari memento les terres ou tenements a un autter en fey, ou en fee talle, ou par terme de vie, et a puis l'abbe mort, son feiccelor ne poiz entrer en les dits terres ou tenements, consent que il ad droit euze aver come en droit de son meynon, mes il eft mit a un action de recouverer mementes les terres ou tenements, quel eft a pelle, breve de ingrefu fine afferfu capituli, etc.

Also, if a man be seited of land as in right of his de

* puiu not in L. and M. nor Reh.

† &c. not in L. and M. nor Reh.

EN droit fa femme, I TEM, fa home feijse de terre come en droit

Also, if a man be seited of land as in right of his de

* puiu not in L. and M. nor Reh.
Lib. 3. Of Discontinuance. Sec. 594.

"de finem, * Et cet enfois a un autre, &c. &c. est murru, la feme n fu puet enter, mes si mis a un aise de, lequel est appel, cui en virtu, &c."

fn. de ut, 32. H. 8. by the purview of which stands, the wife and her heirs after the decease of her husband may enter into the lands or tencents of the wife, notwithstanding the alienation of her husband.

And here is one of the alterations to make a discontinuance, n. a. a focent; and where our author speaks of a husband feigned in the right of his wife, so is it where the husband and wife are joyfully feigned to them and their heirs of an estate made during the coverture, and the husband make a focent in fein, and die, the wife may now enter within that estate, nor is it by the inhereance of them both. And so it is if the focent be made by the husband and wife, (albeit the words of the focent be by the husband only) for in substance is this act of the husband only. (1)

If the husband make a focent in fee of the lands which he holds in the right of the husband and wife, after they are divorced, contra propriam velam, yet the woman may enter within the purview of that focent, and is not driven to her right of use ante domicilium, as she was at the common law, for this estate be by the focent given to the wife, and now the husband is the master of the matter, she was never his lawful wife. But it sufficed that she was his wife de fide at the time of the alienation, and where her husband die the wife be not the wife at the time of the focent.

If the husband leaves a finite with proclamations, and die, the wife must enter or avoid the estate of the covenants within five years, or else the bar is barred for ever by the focent of 4. H. 7 for the focent of 32. H. 2. die, he discontinue the focent but not the bar; and the focent speaketh of a fine, and not of a finite with proclamations.

If lands be given to the husband and wife, and to the heirs of their two bodies, and the husband die, or die and die, the wife is holpen by the fald focent, as hath been said, and so is the issue of both their bodies. Feme tenant in taille taken husband, the husband make a focent in fee, the wife before death die without issue, he in the recovery or remainder prefered.

For, first, the recovery or remainder cannot be defeated in this case, because the focent is not continued. Secondly, the words of the focent be, shall not be prejudicial or hurtful to the wife or her heirs, or such as shall have right title or interest by the death of such cozen, but that the same cozen and her heirs, and such other to whom such right or remainder shall descend, shall have or enjoy all such estates and lands, &c. according to their rights and titles therin; for the words of the act in the recovery or remainder in that case is preferred. The husband is tenant in tail, the remainder to the wife in tail, the husband make a focent in fee; by this the husband by the common law did not only discontinue his own estate tailed, but his wife's remain: but in this case at the death of the husband without issue, the wife may be by the act of 32. H. 2. die.

If the husband hath hire, and maketh a focent in fee of his wife's land, and the wife die, the heir of the wife shall not enter during the husband's life, neither by the common law nor by the focent.

Cui in virtu, &c. Here is also implied a fine cui in virtu for the heir. This heir mentioned in our author is so called of those words contained in the heir, which you may read in the Registrar and Fitzherbert's N. B.

Sec. 526.

* Ges. 2, n. in L. and M. nor Roh. § Ges. 2, n. in L. and M. nor Roh.

(1) But a fine levied both by husband and wife of her lands is not within the focent, and it operates as a bar to her and her heirs, of all her estate and interest in the land.
ENEFOFFA un
anter, Ec. Here is
implied, or make a gift in
taille or estate for life.
Here Lib. 3. cap. 34.

ITEM, si tenant en
taille de certaine
terre est enefoffa
anter, Ec. et ad ijue
et moruly, son ijue ne
pae pas enter en la
terre, contemque a
titre et droit a co,
mes mis a fon ac
que fap apel
forme en la dis-
cender, Ec. (1)

Fleta lib. 3. cap. 34:
(4o. Rep. 3. b.
Polil. 358. 2.)

Sect. 595.

If land were entailed to a man and to his wife, and to the heirs of their two bodies, and the husband had made a settlement in fee and died before his wife died, this has been held to create a dif-
ficult question to be determined by the law and usage which claim by dowers for certain males. The second is in the reverberator, which lies for him in the reverberator or his heirs or assigns after the date
time be spoken. The third is the remainder, which the law gives him to the remainder, his heirs or assigns, after the determination of the esse tail; all of which you may read in the Register and F. N. B. 788.

Here Lib. 3. cap. 34.

TEE, si tenant en
taille de certaine
land thereof enefosse
another, Ec. and hath
ijue and diest, his
ijue may not enter into
the land, albeit he
ijue and title to this,
but is put to his ac-
tion, which is called
form of the

Fleta lib. 3. fol. 58.
(4o. Rep. 3. b.
Polil. 358. 2.)

Sect. 595.

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ijue and title to this,
but is put to his ac-
tion, which is called
form of the

Tell a story about a man named John who had a large estate. He had three children: a son, a daughter, and a daughter's husband. John had made a settlement in fee for his son and daughter. When John died, his daughter's husband challenged the settlement and claimed the estate for himself. The case went to court, and the judge ruled in favor of the daughter's husband, determining that he had a right of dower. The case was appealed, and the higher court upheld the decision, stating that the daughter's husband was entitled to the estate. The son was disappointed but accepted the ruling. The daughter's husband was happy, and the daughter was relieved to know that her husband's rights were protected.
ITEM, if a tenant en taile, the reversion being to the donor and his heirs, if the tenant make a feoffment, * &c., and mortally faine, ce- leg in the reversion he pos- set, mes est mis a fon action de forme- don en le reverter.  

ALSO, if there bee a tenant en taile, the reversion being to the donor and his heirs, if the tenant make a feoffment, &c., and die without issue, he in the reversion cannot enter, but is put to his action of formedon in the reverter (1).

FAIT feoffment, (F. N. B. 413) &c. Here is implied fe simple, fe taile, or estate for life; and in this and the next Section Louis, pattern two cases where if the issue in taile fails, they in the reversion and remainder are direct to their foreran in reversion or remainder; and this remainder, as it was wrong, wrote, was altered by any statute. And the reason whereby these alienations in the several cases in this and the next Section doe make a difference, and put him in the reversion or remainder that right had to his ac- tion, and trock away his entry, was, for that he was privy in estate, and for the benefit of the purchaser, and for the safeguard of his warrantee, so as every man's right might be pro- fered, so to the descend- ant for his ancient right, and to the feedivider for the benefit of his warrantee, which was founded upon great renown and equitie: which by such benefit of the war- rantee should be prevented and avoided if the entitle of right had not been lawfull, and thereby also the danger that many times happeneth by taking of partitions was wholly prevented by law. But then it may be demanded, seeing that there was no re- version or remainder expec- tant upon any estate taile at the common law, nor the issue in taile had any remedy by the common law, for that in taile in the fee-tenant was aliened, then by what law is the alienation of ten- ant in taile a大陸- tance at this day to the issue in taile, or to him in reversion or remainder? Whereunto it is thus an- 

Sect. 597.

EN mofine le manner ef, lou tenant en le taile & fils de certes- taine terre dont le re- 

mainder ef au auter en taile, ou en a au- 

ter en fee. Si le tenant en le taile asseiz en fee, ou en fee taile, et puis devient sans fain- 

fie, ceux en le remainder ne posent enter, mes fon mes un brief of for- 

medon en le remainder, &c. et par ceo- 

que per force de tiers feoffments et ali- 

enations in the cases avant- 

dits, et in semblables de fees, ceux quez ont title et droit apres la 

dorme of tiel sefoor ou 

alioen en po- 

sent pas enter, mes font mis a leur aitions, ut supre; et 

par ceo ceae tiers 

feoffments et ali- 

enations sont appel dis- 

continuances.

his life, only 1, yet, in the eye of the law, he is considered as feigned of an estate of inheritance. To understand this, it should be remembered, that in the case of a fee simple conditional at common law, the condition, from which that estate took its appli- cation, did not depend the fee from selling in the dower, immediately by the gift. Thus, we find, that, if he alienated before he had issue, it not only was not a forfeiture, but, if afterwards he had issue, it was a bar to them. See Plo. 339. 1. Inst. 333. But the condition, though it did not prevent the fee from selling in the dower, answered his power of alienation. To that power it was con- sidered to be a condition precedent, that the dower should have issue issue. The statute extinguished the power, but did not affect the estate of the dowerer, in any other respect: so that a tenant in tail was as much fee simple of the inheritance, after the estate of dower, as a tenant in fee simple conditional was before. Hence, if he made a feoffment of it, and it did not, during his life, affect or prejudice the issue. Thus his alienation was, primarily, a lawful transfer of the freed; the suite came into his right, and his dower could not be impeached, during the life of the dower. In conformity to the established rule of the common law, that when- ever possible it should be defeated to every, however beneficial or un- lawful the title of the granter himself might be, the statute of dower did not absolutely nullify the alienations of the dower in whole, but enabled the issue to defeat them by the formenon of the decease. It is generally said that the writ of mortseppencer was the original writ, at the common law, for the issue, against the alienations of his dower, and that the formenon did not lie, till the issue of dower. This must be understood with the following qualifications. 1. A writ of mortseppencer could certainly be maintained against an alienor; but, as one of the three points in that writ, to be enquity, it was the owner or owner of water foot feoff- 

x, e fist, in dominion fee en de brus, de que oys, it could not be maintained against a dower. See Bost. 207. 2. In one case, a formenade was certainly admitted at the common law; that was, when a man had issue a son, and his wife died, and he afterwards married his friend, and his wife was given to them of their two sons begotten, and there was issue of that marriage, and both the father and the mother died, and a stranger adopted; the, issue of the second marriage could not maintain a writ of mortseppencer for one part of the issue to be enquity, et spusus pro propriis herbes, to which declaration an issue of the foreman was not sufficient, and the whole was a son of the first. See Bost. 207. Aust. 416.

(1) Vide sect. 597. 601. 657. 668.


(4) Vide sect. 597. 601. 657. 668.

forced, that it is provided by the statute of W. 3. c. 1. De dominis conditionabilibus, quod non habebat illi pulsus transmutacionis sicut datam postfata alienatioe etc., &c. Upon their words the fates of all the persons concerned are to be considered according to the common law, and that in divers and sundry variable manners. For some alienations of tenant in tail, they have adjudged voidable by the taws in tail by action only; some at the election on the issue; the others to avoid it by action, whereby the heir was made void by the common law of the tenant in tail; which several constructions were made upon the false-fame words aforesaid.

As for example, if tenant in tail make a fiefment in fee, this drives the issue in tail to his action, which is called in law a Discontinuance; and this construction was made, for that at the common law the fiefment of an abbot or bishop, or of the husband feid in the right of his wife, did work a discontinuance; it did drive the sacrificer and the wife to their action, and foreclosed them of their entrie; and as the entrie of the issue was taken away, so consequently of them in reverson and remainder. Also if an abbot, bishop, or hu-

[Image]

[Image]

[Image]
...to the diffeour and to his heires all the right which he hath in the same tenements, this is no discontinuance, for that nothing of the right paffeth to the diffeour, but for terms of the life of tenant in taile which made the releaf, &c.

Section 599.

MES per foemanet del tenant en la taile, fee simple pafla per meigne le fâflement per force de livre de feifin, &c.

BUT by the foemanet of tenant in taile, fee simple pafla by the fame foemanet by force of the livrerie of feifin, &c.

Section 600.

MES per force d'un releafe rien pafler d'vue le droit que il puet loyalmente et droit-meul relâcher, fans loyde ou dammage a autors porrs que eux ent averont droit apres fon deceafe, &c. Iffant il est grand diversité porenter un foemanet d'un tenant en la taile, et un releafe faiz per tenant en la taile.

BUT by force of a releafe nothing shall paft but the right which he may lawfully and rightlully releafe, without hurt or damage to other persons who shall have right therein after his decease, &c. So there is great diversité between a foemanet of tenant in taile, and a releafe made by tenant in taile.

Section 601.

MES il est dit, que si le tenant en taile en esst cas releafe d'un foemanet et oblige day et fes heires

BUT it is said, that if the tenant in taile in this cafe releafe to his difficour, and bind him and his heires to warran...
should be destroyed: and therefore to the end that if
a railroad is damaged, it is necessary for the re-
serve to be paid, and the damage to be indem-
nified, by which means all rights and advantages are
faced. And that I may note it once for all, an (If of do)

the family's name, and the name of the family, and the
name of the family of Shaddai, which are entailed, &c.
and the tenant in till the name of the family, and the
name of the family of Shaddai, which are entailed, &c.
and the tenant in till the name of the family, and the
name of the family of Shaddai, which are entailed, &c.
and the tenant in till the name of the family, and the
name of the family of Shaddai, which are entailed, &c.
and the tenant in till the name of the family, and the
name of the family of Shaddai, which are entailed, &c.
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and the tenant in till the name of the family, and the
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and the tenant in till the name of the family, and the
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name of the family of Shaddai, which are entailed, &c.
and the tenant in till the name of the family, and the
name of the family of Shaddai, which are entailed, &c.
and the tenant in till the name of the family, and the
name of the family of Shaddai, which are entailed, &c.
tie discedera a cehy que efe heire per le common law.

By these two examples in this and the Section next following, it appeareth that a warrant being added to a releas or confirmation, and defendn upon him that right have before, whereby it is out of the power of the law, and worketh no discontinnance, if the warrantie defendeth upon another.

Ove garrantie, &c. Here is implied that he doth bind him and his heirs to warrant to the releas and his heirs.

Tous fai garrantie discontinn a fort heire al common law. This is a 15. H. 4. Gartanie 91.

made by the common law, and hereof more shall be sais in the Chapter of Warrantie, 16. H. 2. garnante 860.

Seet 718. 735, 736, 737. So as it is not the warrantie only that maketh a discontinnance, (Vell 376.)

but the warrantie and the distant upon him that right hath together.

Section 604.

ITEM, if an abbot be deceived, and he releaseth to the discontinnier with warrantie, this is no discontinnance to his successor, for because nothing passeth by this releas but the right which he hath during the time that he is abbot, and the warrantie is expired by his privation, or by his death.

where the bishop is patron and ordinary, and confirmeth a lease made by the parson without the deane and chapter, and after the parson dieth, and the bishop calleth another, and he is confirmed, and the bishop confirmeth the successor, this confirmation remade good; for the revenues that are to maintain the successor are not thereby diminished. And the like deliberate hold in case of resignation, notwithstanding [w] the authority to the contrary.

Section 605.

ITEM, if a man seiled in the right of his wife be deceived, and he releaseth, &c. with warrantie, this is no discontinnance to the wife, if shee for vieth her husband, but that the may enter, &c. Causa petat.

This is evident, unfeith the wife be heire to the husband (as by law the may be), and then it is a discontinnance for the cause aforesaid.

Secii.
should be destroyed: and to the end that if affords in fee simple does depend, be to whom the issue is made; may claim the same, and barre the demandant: by which means all rights and advantages are faced. And I may note that it once for all, an (in) dit) with Livibem, is as good as a consecration in a book café.

Sect. 602.

MES f a home ad iificus fìts per sa feme, et sa feme moruit, et puis il prendi ad fìts, et le second fìts, et et les heires de leur deux corps engendres, et ils ont iificus un autor fìts, et le second fìts moruit, et puis le tenant en le talle effi difi se, et il reléja al difi se tout fon droit, &c. et oblige hely et ses heires a la garantie, &c. et devia, celo effi pas discontenance at iificus en le talle per le second fìts, mes il poit bien enter, § para ce que le garantie disi se a son eigne frene que son pier apoir par le premier fìts, &c.

(8. Rep. 86)

EN meme le maner ef, lai tenemments fots descendable a le fìts puissi folonques le custome de Burgh Englîf, queux fots entailes, &c. et le tenant en le talle ad deux fìts, et ef difi se, et il reléja a fon difi se tout fon droit oue garantie, &c. et moruit, le puissu fìts poit enter far le difi se, nient obliant le garantie, par ce que le garantie disi se al eigne fìts: car touts fìts le garantie

In the same manner is it, where lands are descendable to the younger son after the custome of Burrowgh-Englîf, which are by entail, &c. and the tenant in tail hath two sons, and is disfei, and he releaseth to his disfessor all his right with warrantie, &c. and dieth, the younger son may enter upon the disfess, notwithstanding the warranty, for that the warrantie descendeth to the elder son: for always the war-
tie disfendera a cæliby que est être rantie shall descend to him who is
here by the common law.

By these examples in this and the Section next following, it appeareth that a war-
ranty being added to a releas or confirmation, and depending upon him that right
hath or will have, is a discontinnus; otherwise it is out of the reach of the law,
and worketh no discontinnus, if the warranty decontinned upon another.

Oue garrantie, &c. Here is implied that he doth bind him and his heirs to
warrant to the releasor and his heirs.

Touti foit, le garrantie disfendit fur le être al common ley. This is a
maxime of the common law, and hereof more shall be said in the Chapter of Warrant,
of sect. 274. 275. 276. 277. So as it is not the warranty only that makes a discontinnus,
but the warranty and the discontinned upon him that right hath together.

Sect. 604.

If an abbet be disfiefe, et il relefa a le disfiefor garrantie, ceo
n'est pas discontinnus a son fuccesseur, por ceo
que rien paffa por cel releas forçeu le droit
que il ad durant le temps que il est, et le garrantie ex
pire por pre privation, ou por fa mort.

where the bishop is patron and ordinary, and confinueth a legate made by the parson
out of the deans and chapter, and after the parson dieth, and the bishop collateth another, and
is then transtitted, yet his acts does remaineth good; for the revenues thereon are no discontinnus,
the fuccesseur are not thereby diminished. And the like divorce doth hold in case of
notwithstanding [a] the authority to the contrary.

Sect. 605.

If a man feied in the
right of his wife be dis-
fiefe, and he releaseth, &c.
with warranty, this is no discon-
tinnus to the wife, if shee fur-
viveth her husband, but that she
may enter, &c. Caufa patet.

THIs is evident, unless the wife be heire to the husband (as by law the may be), and
then it is a discontinnus for the cause aforesaid.

1. between and by the parties to such pensions, that the perfon or persons whom the fild A. shall marry; and every person who by
2. virtue of the limitations hereinafter contained, or of this provis, or of the provis next hereinafter contained, shall become
3. entitled to the pensions, or to the receipt of the rents and profits of the manors and other hereditaments hereby released, or sit
4. by virtue and intended to be, shall and do, within the space of one year next after they shall be released, or sit become
5. entitled to the pensions, or to the rents and profits of the said manors and other hereditaments as aforesaid, take upon him and
6. them respectively, and use in his offices, leases, accounts, and other writings, whereof they respectively shall be, or sit
7. part, or which they respectively shall sign, the signature of Brown alone, and take and use no other signatures, and quarter the sums
8. of Brownes, with their own respective signatures; and all to shall and do, within the space of one year next after they respectively
9. shall so marry, or so become intituled, sit assigned, pay for, and endeavor to obtain an act of parliament, or a proper
10. license from the crown, or take such other means as may be requisite or proper to enable or authorize him, or them, respectively,
11. to take and bear the said signature and arms: and that, in case any such person or persons shall refuse or neglect to take such
12. signature and arms, and to take and use the figna, which shall be requisite or proper to enable and authorize him or them
13. to do so, within the space of one year; then, if the perfon so refusing or neglecting shall be the husband of the fild A., the
14. limitation hereinafter contained, to the use of the fild A. shall cease, determine, and be utterly void; and any annual sum, which
15. by virtue of the power for that purpose hereinafter contained, the said A. shall grant, limit, or appoin, to the use of, or on trust for,
16. or for the benefit of such husband so refusing or neglecting, or to the persons, or remittance, and terms of years which the said shall limit,
17. or for or in favour of the issue of the said A., or for or in favour of any other person, or persons, or any other person, or persons,
18. or for the benefit of such husband so refusing or neglecting, and the persons, or remittance, and terms of years under which the said shall limit,
19. or for the benefit of such husband so refusing or neglecting, or to the persons, or remittance, and terms of years under which the said shall limit,
20. or for the benefit of such husband so refusing or neglecting, and the persons, or remittance, and terms of years under which the said shall limit,
21. or for the benefit of such husband so refusing or neglecting, and the persons, or remittance, and terms of years under which the said shall limit,

Sect. 606.

(T. Sum. art. 5.)

I T E M, if tenant in taille of certaine terre lejfa meffine la terre a un auter pur terme des ans, per force de quel le lejfe en est possefion, en quel possefion le tenant en taille per fon fait releffo tout le droit que il avoit en meffine le terre, a over et tener a le lejfe et a fis heires a toute jours; cee n'est pas discontinuance, mais apres le deceas le tenant en taille, fon illese poibt bien enter, pur cee que per tiel releffo riens pafla for que pur terme de * la vie de de les tenans en le taille.

ALSO, if tenant in taille of certaine land letter the same land to another for term of years, by force whereof the lejfe hath thereof possession, in whose possession the tenant in taille by his deed releaseth all the right that he hath in the same land, to have and to hold to the lejfe and to his heirs for ever; this is no discontinuance, but after the decease of the tenant in taille, his illese may well enter, because by such releaseth nothing paflath but for term of the life of the tenant in taille.

CAR per tiel relebs riens pafla. Here is one of the maximus of the common law rehearsed by our author, whereas he doth put divers examples hereafter.

Sect. 607.

(E. Rep. 85. b.)

EN meffine le manner eft, si le tenans en le taille confirmma l'effate le lejfe pur terme des ans, a over et tener a lay et a fis heires, cee n'est pas discontinuance, pur cee que riens pafla per tiel confirmation for que l'effate que le tenant en le taille avoit pur terme de sa vie, &c.

(Ruy. 58.)

RIENS pafla per tiel confirmation. Here is another of the maximus of the common law rehearsed by our author, whereas he doth put divers examples hereafter.

More shall be said hereof in the next Section following.

Sect. 608.

I T E M, if tenant in taille apres tiel ha granta le reversion en fée per fon fait a auter, et voile

ALSO, if tenant in taille after such lease grant the reversion in fee by his deed to another, and will

* In—jon, l. and M. and Rep.
Of Discontinuance.

 Sec. 609.

que après le terme fini, que même le terme restera à le grante et a ses héritiers a tous jours, et le tenant a terme d'ans attirera, ce n'est pas discontinuance. Car tiels choses que l'on pafloit en tiels cas de tenant en la taille tantôt par myr de grant, ou par confirmation, ou par tief releafe, rien peut paffar pour faire estat à cety a que tief grant, ou confirmation, ou releafe, est fait, forçablement ce que le tenant en taille peut droitullement faire, et ce n'est forçage pur terme de sa vie, &c.

CAR si je laissee terre a un homme pour terme de sa vie, &c. et le tenant a terme de vie laisse même la terre a un autre par terme des ans, &c. et puis mon tenant a terme de vie grantia la reverfion a un autre en fee, et le tenant a terme des ans attirera, en est ceto le grantor + n'ad en le francetnent forçage eflate par terme de vie fon grantor, &c. et jeo que fes en le reverfion de fee simple, ne pusse entrer pour force de cet grant del reverfion feit pour mon tenant a terme de vie, par ce que par tief grant mon reverfion n'est pas discontinuance, mais tout temps demurt a moy, jecome il suit advien, mient obtenant tiel grant del reverfion feit au grantor, a luy et a ses heires, &c. par ce que rien paffa par force de tief grant, forçage eflate que le grantor auid, &c.

FOR if I left land to a man for term of his life, &c. and the tenant for life letth the same land to another for term of years, &c. and after my tenant for life grant the reverson to another in fee, and the tenant for years attorne, in this case the grantee hath in the freehold but an estate for term of the life of his grantor, &c. and I which am in the reverfion of the fee simple may not enter by force of this grant of the reverfion made by my tenant for life, for that by such grant my reverfion is not discontinuance, but always remains unto me, as it was before, notwithstanding such grant of the reverfion made to the grantee, to him and to his heirs, &c. because nothing passed by force of such grant, but the estate which the grantor hath, &c. (1)

Sec. 609.

* et ecr n'ad—cr. ef. l. et M. et Robb. + ad—ad, j. et M. et Robb. 4 estate not in L. and M. nor Robb.

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(1) VII. As to the mode of conveyance which work a discontinuance, it may be laid down as a general rule, that no alienation which is not made by livery of seisin, or which is equivalent to it, can work a discontinuance. It has been observed before, that the usual mode of conveyance at the common law, was a feujoer; that feejoers were formally made without writing; and that when writing came into use, the execution of the property was effected, not by the writing, but by the livery which it accompanied. A feujoer when defined to be a feujoer upon record, the conveyance's acknowledgment upon record of the title of the conveyee to the lands, being considered as equivalent to actual livery. The same, therefore, which was not to be executed, in consideration from that which was not to be executed, give the conveyee the immediate possession of the land, and thence which are called executory, enable the receiver to recover it immediately, be an aucto factis fictis. A common recovery is the judgment of a court of record, that the defendant shall recover against the tenant upon which he may immediately sue out the subseque factis fictis. Confessing, therefore, that there are recoveries only as common executory, the acknowledgegment upon record in the former, and the judgment to recover in the latter, are dispensed to equitably the nosity of livery. Hence, both a feujoer and a common recovery are forms to work a discontinuance. With respect to reference—where the perfect whole estate is discontinued, reference to the silence, his refusal must be considered as operating par mortem droit. Now, it has been observed in a former place, that reference by pariter dissolved, may be made either to the defendant, the fejuor, or his heir, and that in all those cases, the possession is in the receiver, the right in the releaser, and that the order of the right to the possession completes the title of the releaser, the possession of the defeasor countervalidating the livery. But this can only be understood of that case where the receiver has the fee simple. In both cases the possession of the defeasor is equally possible, but where the releaser, as in the instance brought by Lisboa, has only a partial estate in the hands, he has not in his right of possession, and cannot, of course, transfer, or assign it to another. Hens though the release of a defeasor, who before the defeasor was fee-simple, complete the title of the defeasor, the releaser of a defeasor, who before the defeasor had
In the same manner is it, if tenant for term of life by his deed confirms the estate of his leffe for years, to have and to hold to him and his heirs, or releas to his leffe and his heirs, yet the leffe for years hath an estate but for term of the life of the tenant for life, &c.

CAR siles choses que paissant en tiels cafes de tenant en le taile, &c. Here is rehearsed another ancient maxim of the common law touching grants; and hereby it appears that a feuement in fee (albeit it be by parole) is of a greater operation and estimation in law, than a grant of a reversion by deed, though it be sealed, and attornment of the leffe for years of a release, or a confirmation by deed, for the reasons aforesaid. And this is manifested by the examples which our author here in these three Sections puthers.

BUT otherwise it is when tenant for life maketh a feuement in fee, for by such a feuement the fee simple paffeth. For tenant for years may make a feuement in fee, and by his feuement the fee simple shall passe, and yet he had at the time of the feuement made but an estate for term of years, &c. (1)

ALS, if tenant in tail grant his land to another for term of the life of the said tenant in tail, and deliver to him feoff, &c. and after by his deed he releaseth to the tenant and to his heirs all the droit

(1) What feuement is required in the feuoff to make his feuement an abstract diſtinct of the feuhold; — not merely a diſtinct, which is such in the election of the party for bene, of ban, a feuement of such diſtinctness; and it is therefore upon the following terms et a full investigation of the very aldikes, but not siſtates, knowing upon the feuement, will not be unac-
Lib. 35. Of Discontinuance. Sect. 613, 614.

right which bee hath in the same land; in this case, the eftate of the tenant of the land is not enlarged by force of such release, for that when the tenant had the eftate in the land for term of the life of the tenant in taile, he had then all the right which tenant in taile could rightfully grant or release; so as by this release no right passeth, inasmuch as his right was gone before.

Sect. 613.

ITEM, if tenant in taile for his deed grant to another all his eftate which he hath in the tenants to him entailed, to have and to hold all his eftate to the other, and to his heirs forever, and deliver to him seisin accordingly, in this case the tenant to whom the alienation was made, hath no other eftate but for term of the life of tenant in taile. And so it may be well proved, that tenant in taile cannot grant nor alien nor make any rightfull eftate of freehold to another person, but for term of his own life only, &c. (1)

The meaning of Linenm in both these cases, in this and in the Section next proceeding, is, that having regard to the issue in taile, and to them in reversions and remainders, tenants in taile cannot lawfully make a greater estate than for term of his life, and therefore this release or grant is no discontinuance. But in regard of himself, this release or grant leaveth no revocation in him, but puts the same in abeyance, so as after this release or grant he shall not have any action of waste.

Grant tant se faye. Vid. Sect. 650. Action of waste, &c. there is implied that he shall not enter for a forfeiture, if after the release or grant the leflee maketh a leftee in fee

Sect. 614.

CARESFido done terre a un home en taile, forant FOR if I give land to a man in taile, having the reversions to my

HERE Linenm proveth, that the seicker of tenant in taile hath no rightfull eftate, having respect

(1) The leasey, in this case, is precedent former estate; and therefore, according to Sir Edward Coke's definition, ante 182, n. In operation and effect are reference to the quantity and quality of the feudal estate contained in the deed. Thus, says he, if a man makes a lease for years by deed, and delivers seisin according to the form and effect of the deed, yet he hath not an estate for years, and the liberty to make another grant, or alien, or make any rightfull eftate of freehold to another person, but for the term of his own life, is not to be understood literally, that the grantor hath no estate in life, nor that his estate lasteth, but what is meant by it is, that his estate is certain and indefeasible, no longer than life of the tenant in taile, for that, upon the death of the tenant in taile, it is defeasible by the issue, either by addition, or by entry or claim on the land, at his death. Still it has a circumstances till it is defeasible by the issue. In principle, in the effect of a term in tail conveying by feoffment, it was held, that the estate of taile did not absolutely nullify the alinement, but only took away the entry of the alinement, and reduced it to his remedy by formality. Upon further principles, in the case of a tenant in tail conveying by seisin in life, and life, residue, paramount to Brand ducil, or any other mode of conveyance operating by way of grace, it is held, that the grantee does not nullify the conveyance, and reduces the issue in tail to his entry or, if he prefers it, to his adjoinder, to void it. Thus, the tenant hath a hold free from his wife is entitled to his dower during the continuance of the for, and if the greater commits waste, the tenant in taile, having no reversion, has no right of action against him. 3 Rep. 94. 4. 10. 96. Ex Mach 1. Clarke, 3. Bul. 46. Parry's 8. Cam. 3. Lord Raym. 7. 41. Goodr. on the demise of Tyrell v. Mens and Shilling. 3 Burr. 453. Papers, &c. in Linenm shall be underwrit in this qualification, otherwise it is inoperative. This was observed by land Chief-Justice Holle in the case of Mach 1. Clarke, and by land Chief-Justice Holme in the case of Shiffield v. Ratcliffe. Hob. Rep. 355, 356.

capable to the reader. By the doctrine of the feudal lim, no person who had an estate of less duration and extent than for his own life, or for the life of another man, was considered to be a freeholder; and none but a freeholder was permitted to have the possession of the land. It is true, that estates were sometimes held for terms of years. In such case, the possession of the tenant was considered to be the possession of the freeholder; but till the tenant held the possession, the tenant held it for the freeholder and the freeholder, by tenure the term with it, could himself to sell it, by the tenant's negligence or otherwise. If the tenant left the possession vacant, if he permitted himself to be dispossessed of it if he undertook to alien it either by act in point, or by matter of record, if he claimed the fee or if he
Lib. 3.
Cap. 11. Of Discontinuance.

respect to two persons; the one is to the donor, whose
reversion is directed to be held in fee; and the other to
the donee, who is driven by his actio to recover his
right.

A tort lay deforece.

[6] a Dreforres is a word of
art, and cannot be expreessd by any other word; for it sig
nifieth, to with hold lands or tenements from the right owner
in which case either the entry of the right owner is
taken away, or the defforrece holdeth it to fast, as the right
owner is driven to his real prucrte, whereas it is fall, if
therein and the defforrece, or defforrece to liburb rh right
owner, as he cannot enjoy his own; and therefore
is fall. Per hoc autem quod
dictur in brevi uium praef
sationem deforres, dicentur qui
biflem quod surrent in-
per hoc quod deforres fieri
in sejunct, fimul in brevi de rolla,
dictur non aut censet, aut
fuit deforrece qui possissecrit in fic
suae non permitter omniu
et mitiae communit impedita pre
stantia, appellando, impriu
ando, sequeim quod dictur de diffuscito,
satisfactiif dictur suo qui aut non possissecrit
omniu vel mitiae communit isto esse.

In this case that Littleton putteth, the deforres
being in b y, is no diffuscito; the actio was late;
but a defforrece; and indeed commeth Defforrece, and thus did antequite define it: [e] Defforrece, como fasson
entur in aour tenentia aut com en loro soucy o o en marue, en allers, et roques, en pot
en auter can defforrece et defforrece. And for that at the first the withholding was with
violence and force, it was called a defforrece of the lands or tenements; but now it is gen-
ernally extended to all kinds of wrongfull withholding of lands or tenements from the
right owner. There is a writ called a qued et dictum, and Rietuh where tenant in said, or tenant
for life, corrected by default, by the statute he shall have a qued et deforrece against the
re
coveror, and yet be commeth in by court of law. (1)

SEM. If terre fite lige a un
borne par terme de fa vie,
le remandre a un auter en
le tile, le ced de en le remandre
voile graunter son remandre a
un auter en fee per son fait, et
le tenant a terme de vie atturra,
eco n'ofp best disconciuance de le remandre *.

ALSO, if land bee let to a man
for termes of his life, the re-
mainder to another in taile, if he
in the remainder will grant his
remainder to another in fee by his
deed, and the tenant for life
at them, this is no discontinuance of the
remainder.

SECT.

affirmed to be in a stranger. [1]--in all thses cases, the freeholder expended himself in the loss of the possession, as much as if they were his own ends. [2] That the tenant held the possession, but was fooled to hold it motionless, in contradistinction to the freeholder himself, who was fooled to hold it nonmoving property. Hence Helston expeditly defines to be by the "freeholder," and the author of the Destrler and Scundent 1715, "that the possession of the land is called in the law of England "the Frantment or frehold!", Britts. C. 32. Dearn. and St. L. 6. 9. 12. So too Helston in those days was the possession to the freehold. In this respect is the possession of the tenant differed from that of a more bailiff, who had no possession. Those same principles obtained with respect to the transfer of the frehold. Nothing further was necessary than a delivery of the possession, or, as it is called in more lawwriters, a delivery of a fee. The frehold could be transferred by no other means. But there a difference is to be differed with respect to the effect of the liberty of a term of terms (titles as were mentioned before), and the liberty of a mere bailiff. On account of the falsumity, upon which the entry of the tenant into the lands was grounded; the connection between him and his actuality holding the possession of the land (though he held it for the freeholder), the liberty of the former was a transfer of the possession; but the liberty of the latter was absolutely without effect.

felle, and after the ten-
ant in taile infoehted
another in fee, the
freeholder hath no right-
full eftate in the tena-
tments for two caufes.
One is, for that by such
fealement my revision
is discontinued, the
which is a wrong and not a
rightfull act. Another
cause is, if the tenant in
taile dieth, and his
issue bring a writ of
formulon against the
freeholder, the writ and
also the declaration shall
fail, etc. That the
freeholder by himselves,
Ergo if he deforrece him by
wrong, he hath no
right eftate.
Sec. 616.

**ITEM.** If someone rent service or rent charge in tail, and he grant the tenant an assure, or else pass the property, this is not discontinuance, &c.

**ALSO.** If a man hath a rent service or rent charge in tail, and hee grant the fayed rent to another in fee, and the tenant, this is no discontinuance, &c.

Sec. 617.

**ITEM.** If someone rent tenant in tail of an advowson in gross, or of a common in gross, if he by his deed will grant the advowson or common to another in fee, this is no discontinuance; for in such cases the grantees have no estate but for the term of life of the tenant in tail that made the grant, &c.

**ALSO.** If a man be tenant in tail of an advowson in gross, or of a common in gross, if he by his deed will grant the advowson or common to another in fee, this is no discontinuance; for in such cases the grantees have no estate but for the term of life of the tenant in tail that made the grant, &c.

By the cases in thefe three Sections it appeareth, that if a remainder or a rent service, or a rent charge, be given, or a common, or any other inheritance that lie in grant, be granted by tenant in tail, it is no discontinuance, as formerly hath been said.

(p. Note, here is an advowson named by Lidenos, as a thing that lieth in grant, and polced not by livery of feftns.

Sec. 618.

**ET nota, que de tffas choses que**

**AND note, that of such things as**

**pass by way of grant, by deed made in the countrey, and with-**

**out livery, there such**

**grant maketh no discontinuance, as in the cafes aforesaidy, and in other like cases, &c.**

**And albeit such things bee granted in fee, by fine levied in the king’s court, &c.**

Here is the general reason yielded of the precedent cases and the like; for that it is a maxim in law, that a grant (if) by deed of such thing as doth lie in grant, and not in livery of felsen, doth not work discontinuance. (1)

But the particular reason is this, that for such of such things the grant of tenant in tail worketh no wrong, either to the life in tails, or to him in revetment or remainder; for nothing else passe but annely during the life of tenant in tail, which is lawful, and every discontinuance worketh a wrong, as hath been said.

(1) If

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

* et font livery, in—Gr. livery, L. and M. and Rob.*

* et co-was, L. and M. and Rob.*

(1) VII. That assaying which lies in grant can be said to be discontinuance.—The term discontinuance is used to distinguish those cases where the property, whether fee-simple or fee-finite, can suffer by assaying, only, from those in which he may suffer by entry. Now, things which lie in grant cannot either be divided or reduced by entry. The reason, therefore, of any thing which lies in grant, lies in no futility and under no circumstances, any other remedy but by assaying; consequently the discontinuance in question can never be applicable to him. It is true, that the books often mention such discontinuance and discontinuances of incorporeal inheritances; but their discontinuance and discontinuances are only at the election of the party, for the purpose of assaying himself or the remedy by assaying. Some observances on discontinuance of this description are inserted in the note below, commencing at page 354. But a discontinuance or discontinuance of incorporeal inheritances latterly express is a discontinuance or discontinuance of all the incorporeal rights or interests which the discontinuance or discontinuance has itself in upon or out of the land affected by the discontinuance or discontinuance.

If tenant in tail of a reversion or remainder in tail, &c., or of a freehold in fee simple, or remainder in fee simple, &c., grant the tenant in tail of a reversion or remainder in tail, &c., the tenant in tail of a reversion or remainder in tail, &c., by the will being tenant in tail, by his letters patents the lands in fee, there is no discontinuance wrought.

Per fine. Of a thing that lieth in grant, though it be granted by fine, yet it is not continuous, &c., &c. If tenant in tail make a lease for years of years, and after levie a fine, this is a discontinuance.

NOTE. If I give land to another in tail, and hee letteth the same land to another for terms of years, and after the lesse granting the reversion to another in fee, and the tenant for years attorn to the grantee, and the term expirith during the life of the tenant in tail, by which the grantee enters, and after the tenant in tail hath issue and die; in such case this is no discontinuance, notwithstanding the grant be executed in the life of the tenant in tail, for that at the time of the lease made for years, no new fine was registered in the lefse, but the reversion was remained to him in tail, as it was before the lease made.

* THIS is added to Libeone, and not in the original, and therefore I purposely omit it. Yet the case is good in law, because neither the lease for years, nor the grant of the reversion, divides any estate.

Sect. 619.

"Nota-terem, L. and M. and Rob. No part of these Sections within crochets, is in L. and M. and Rob."
Of Discontinuance. Sect. 620.

If the tenant in tail make a lease for term of life of the lessor, &c. in this case the tenant in tail hath made a new reversion of the fee simple in him; because when he made the lease for life, &c. he discontinued the tail, &c. by force of the same lease, and also he discontinued my reversion, &c. And it behoveth, that the reversion of the fee simple be in some person in such case; and it cannot be in me which am the donor, inasmuch as my reversion is discontinued; ergo the reversion of the fee ought to be in the tenant in tail, who discontinued my reversion by lease, &c. And if in this case the tenant in tail grant by his deed this reversion in fee to another, and the tenant in fee at turn, &c. and the tenant a term of a term of life of the lessor, &c. in this case he made a lease for fee simple in him; and after the tenant for life died, living the tenant in tail, and the grantee of the reversion enters, &c. in the life of the tenant in tail, then this is a discontinuance in fee; and if after the tenant in tail morrily, &c. he not eat, mens & c. in a fine form of

BUT if the tenant in tail make a lease for term of life of the lessor, &c. in this case the tenant in tail hath made a new reversion of the fee simple in him; because when he made the lease for life, &c. he discontinued the tail, &c. by force of the same lease, and also he discontinued my reversion, &c. And it behoveth, that the reversion of the fee simple be in some person in such case; and it cannot be in me which am the donor, inasmuch as my reversion is discontinued; ergo the reversion of the fee ought to be in the tenant in tail, who discontinued my reversion by lease, &c. And if in this case the tenant in tail grant by his deed this reversion in fee to another, and the tenant in fee at turn, &c. and the tenant a term of a term of life of the lessor, &c. in this case he made a lease for fee simple in him; and after the tenant for life died, living the tenant in tail, and the grantee of the reversion enters, &c. in the life of the tenant in tail, then this is a discontinuance in fee; and if after the tenant in tail morrily, &c. he not eat, mens & c. in a fine form of

PUR termes de vie del lessor, &c. Here is implied, or for (1. Roll 639) termes of another man's life. (1.)

Novel reversion de fee simple. Which must be under-

(1) VIII. It has been olden before, that no conveyance by tenant in tail can operate as a discontinuance, unless it is granted by him, or by an attorney, who is his attorney or in his name. The conveyance must be of such an estate as in its original creation may by possibility extend beyond the life of the tenant in tail. When the estate is created at an end, the discontinuance dies at an end.

1. In L. and M. and MSS. this Section begins thus: Si fecit donec tertio se nature in tail, et ille de non pons, for se vous avez par

terme de vie, &c. &c. en added in L. and M. &c. se-nr. L. and M. &c. per force de meino que le vay &c. &c. 

2. Discontinuance, in L. and M. but Ren.


Ralph the father, dame Ann his widow entered upon the lands. In Trinity term 1720 a judgement was brought in the court of common pleas, against herJuliana, by John Phillips, upon the several demands of Robert Atkins the son, and Johathan Walker, to whom several terms of years and a life were assigned on the inheritance had been sold, in trust for his Robert the son. A writ was found for the plaintiff, and he recovered judgment in favor of the defendant, and had an order for payment when the plaintiff. Most probably, it was in consequence of the conveyances of many years which had been assigned in him. On the 18th of January 1710, John Phillips, the plaintiff, executed an indenture of quitclaim to Robert the son for the sum of 40s. for Robert made a covenant of the estates in question, with liberty of sale, to James Lake and his heirs. In the deed of covenant it was declared, that the covenant was made, that James Lake might have perfect title to the hereditaments, in order for the fulling of a common reversion; which reversion, as it was in the hands of Robert Atkins the son, he took in his hands. The reversion was follied in Hilary term 1710. Sir Robert died on the 9th of November 1712, without issue, and issueless. His nephew, Mr. Robert Atkins, the son of Robert Atkins the son, was brought into the hands of the Chambers, and in 1719 and 1723 a general writ was given for her. She died in the month of October following. Upon her death, Mr. Robert Atkins entered, and continued in possession of the estate till the 16th of March 1751, when he died, leaving issue only two daughters; Ann and Elizabeth. The estate of Mr. Chamberlayne, and the death of his Robert Atkins the son with-
Cap. I.  Of Discontinuance.  Sec. 620.

If the husband had made the lease alone.

Et puis le tenant a terme de vie morituri, &c. The law is it if the tenant for life surrender to the grantee, or if the grantee recover in an action of waste, or enter for the forfeiture.

Avocat feint et execution. And here it is to be observed, that when the registration in this case is executed in the life of tenant in tail, but not for life pafli by levy.


Caus es ejf et force de grant mefme le tenant en tyle. If a tenant in tail make a lease for life, the remainder in fee, this is an absolute discontinuance, albeit the remainder be not executed in the life of tenant in tail, because all is one concern, and paffes by one livings, and for a diversitie between a grant of a reversion, and a limitation of a remainder. The tenant in tail maketh a gift in tail to A. and after B. releaseth to A. and his heirs, and after A. dieth without issue; the issue of the first dower may enter upon the collateral heire, because A. had not feign and execution of the reversion of the land his dower in seque, because Listerine here speaketh. But if tenant in tail make a lease for the life of the leflee, and after releaseth to him and his heire, this is an absolute discontinuance; because the fee simple is executed in the life of tenant in tail.

If a tenant in tail make a lease for life for the life of the tenant in tail, and to him and his heirs, and die before execution, this is no discontinuance. Otherwise it is, if it had been executed in the life of tenant in tail.

If tenant in tail make a lease for life of the leflee, and after grant the reversion with warranty, the description in tail, this is no discontinuance; because the discontinuance was (as hath been said) but for life, and the warranty cannot enlarge the same. (1) Et ece ejf et force de grant de mefme le tenant en tyle. Hereupon Listerine himelfe is of the same opinion, (ast) as it appeareth, he was in our booke. (2) But for feign and execution of the tenant in tail, and the leflee, and that grant granteth it over, and the leflee, and the life of life, dieth, so that the reversion is executed in the life of tenant in tail, yet this is no discontinuance, but that after A. dieth without issue, the tenant in tail in the life of tenant in tail the issue may enter; (as Listerine here taketh) he is not in the grant of the tenant in tail, but of his grantee.

If this day tenant in tail make a lease for life, and after by deed indented and inrolled according to the statute he bargaineth and feigneth the reversion to another in fee, and the leflee dieth, so the reversion is executed in the life of tenant in tail; albeit the bargain is not in the per by the tenant in tail, yet insomuch as he claimeth the reversion immediately from him, which is executed in his lifetime, this is a discontinuance. And so it is, if the tenant in tail make a lease for life, and after the tenant in tail the issue may enter; (as Listerine here taketh) he is not in the grant of the tenant in tail, but of his grantee.

Upon the decease of dame Ann Ackyns, Mr. John Tracy became feild in tail of the lands devised by the testators will, with the several remains over. In the year 1603, an ejectment was brought against Mr. Robert Ackyns, and Mr. and Mrs. Horde, and Mr. and Mrs. Chamberlaynes, by Cynthia Taylor, on the demesne of Mr. John Tracy, who, in consequence of a devisal contained in Sir Robert Ackyns’s will, had taken the name of Ackyns, and for the same.

The case was argued four times before the judges of the court of king’s bench. A point arose, whether wrongfully declaring the recovery to be bad, the plaintiff’s ejectment, not having been brought within twenty-one years after his title accrued, was not by the statute of limitations. The court was of opinion, that the act was barred by that statute, and declared all the judges were ordered to attend; their opinion was tidy upon the point arising from the statute of limitations: it agreed with that of the judges of the court of king’s bench; the judgment of the court was thereupon affirmed. After Mr. John Tracy Ackyns, and all his heirs, died without issue; and thus, supposing the recovery to be void, Mr. Edward Kinty Ackyns, the then heir at law of Mr. Richard Ackyns, became entitled to the estate. He claimed under a new title, and was not therefore bound by the statute of limitations. It was delivered by Mr. Justice Hulme in Hilary term 1645. It was delivered by Mr. Justice Hulme in Hilary term 1645.
Sect. 621.

ENunque le manner, ferra, si en el cafo arvaditi 1é te- nant a terme di vie apres l'at- tournament al grantee uf alien en fie, et le grantee uf enter per forfeiture de fon efate, et puis le tenant en taille uf dette, c'efl un discontinuance, cauf qu'il- pra.

THIS is added in this place, but in the original is committ in after in this

Sect. 622.

MES en cef cas, fi tenant en taille que granta le rever- fon, &c. morfyf, vivant le tenant a terme di vie, et puis le tenant a terme de vie morfyf, et puis ce- hy a que le reverfon fuit grant enter, &c. donque cef n'efl pas discontinuance, mes que l'iffue del tenant en taille poir bien enter per la grantee del reverfon; par ceo que le reverfon que le grantee avoit, &c. ne fuit ex- cufe, &c. en la vie le tenant en taille, &c. Et iflunt il ef grant diversity quant tenant en taille fait un los par terme d'ans, et lou il fait bas par terme di vie; car en l'un cas il ad reverfon en taille, et en l'auter cas il ad un reverfon en fie. 

O F his sufficient hath been told before, and is of itself manifest, and needeth no explication.

Like law was at the common law of a husband and of a land in right of his wife, Mutatis 18 Abs. e. 11. 6. 33. 

Sect. 

a But it does not appear in this Chapter in L. and M. nor Roh. nor in MSS. 

(1) See the note on the following Section.

defined forkis to be a technical term, to denote the completion of that investiture, by which the tenant was admitted into the tenure; dificitas, therefore, must mean the turning the tenant out of his tenure, and usurping his place and feudal relations. He delivered, that originally no tenant could alien without licence of the lord; and that, when the lord consented to the alienation, the only form of confirmation was by feoffment, before the peers of the court, with the lord's concurrence, and with the ceremonies of homage and fealty. That a difficitas differed from a dispositio. It was something more. The effect of it was to make the difficulty tenable to every demandant, and fraudulent to the owner, in lieu of the true owner. Thus, on the one hand, the lord must know upon whom to call as his tenant on the other hand, the stranger must know against whom to bring his process. A dispositio, therefore, did not amount to a difficitas, if it were not forbidding, that is, against the will of the real owner; and if it were not such as, both with respect to the lord and to strangers, introduced the dispositio into the tenure. Then, in this case, the confruences of an actual difficitas. A difficitas by alleviate was attended by some of these circumstances. In that case, the difficitas was another tenant to the lord nor to the stranger; he was merely a difficitas or the will of the difficulties, who might, if it he thought the process of alicef an eligible remedy, and any of such to which he might have recourse, without prejudicing his tenants, refers to it, and, for that purpose, should be considered as difficitas. From this description of the nature and consequences of the two different kinds of difficitas, his lordship inferred, that for Robert's entry was not an actual difficitas. Supposing it a real proceeding, a tenant might recover against the difficitas, or against the title of the settlor; the possessors or were entitled to recover their possession, without prejudice to the right. Now, by the special vestib, it appears he had no right to the possessors; he had therefore a possessors without prejudice to the right. He was not in particular tenant; there was no privacy of title; he had only a naked possessors. That, says his lordship, the case is still stronger: the true owner cannot even steal to make a possessors in possessors under a judgment in ejectment, a difficitas; the entry is not token & Jur. justices, but under authority of a court of justice. The true owner might enter upon a difficitas. But after a judgment in possessors, an actual entry would not be permitted. And then this reasoning, his lordship establishes his first position, that for Robert Alleyn did not acquire, by his entry, an actual estate of freehold, by difficitas. This by reason his lordship to the second question, Whether the difficult in Marlo velset an estate of freehold in him by difficitas? Here his lordship concluded, from
Sect. 623.

CAR si terre soit done a un home et a ses beires males de son corps engendres, lequel ad isfe deux fints, et esigne fies ad isfe file et dery, * et le tenant en taine fait un leas par terrene des ans et dery, ore le reverson dif-
cendift a le fies pujoire, par cen que le reverson fuit forfique en le taine, et le fies pujoire est beire male, &c. Mes si le tenant est fait un leas par terrene de vie, &c., et puis morbst, ore le reverson difendifist a le file del eigne fies, par cen que le reverson est en fee simple, et la file est beire gene-
rnal, &c.

Sect. 624.

*E M., si home soist feise en
taille de terres deval?ables per
tettement, &c., et il coe devie a un
auter en fe, et morbst, et l'auter enter, &c., coe n'est pas
discontinuance, par cen que nul dis-
continuance fust fair en la vie del
tenant en taine, &c.

THIS is manifest, and needeth no explanation: only this is to be observed, that no discon-
 tinuance can be made by tenant in taine, but such as is made and effectual in his
time, which is here implied in the (Ser.)

Sect. 625.

AND this opinion in
Leston [5] in our
books, and faith that so it
was adjudicat.

Enjoyst le donor, &c.

This must be under-
standing where the reverson of
the donor is immediately ex-

* et le tenant en taine doit faire un leas par terrene des ans, et dery, not in L. and M. our Eds.

(1) The effect of the lease for years not being created by livery, does not displace the portions, and consequently does not disturb the
defendant of the transfers upon the fiefs inalienable in the estate. It is otherwise where the estate is for life. That is created by livery, and therefore displaces the portion, and gives the tenant in tail a certain effect in fee simple, in reverson immediately executal upon
the life estate of his donor—that reverson must therefore descend on the daughter at heir general.

the principles laid down by him in his discussion of the first question, that the feoffment did not amount to an actual delivery, but was such merely as at the will of donee Adyven. In this part of the question he says, that except the absolute fities with pro-
posal, which he observed, stands upon difficult grounds, and the construction of the flat of 4 Hen. VII. c. 45, for the late
left the bar, he could not think of a case where the true owner, whole enemy is not taken away, might not also, by choosing a poulty remedy, to be deposed as not having been delivered. The point of the king's bench, in the opinion delivered by them in 1779, express themselves still more strongly on this head. They say, that "where the books speak of feoffments in fee by "tenants for years and that the fee simple is put there, it is to be understood that the feoffments of aid, attended with nudity, "and actual transmission of the portion from one man to another, that feoffments, from having been the only conveyance of
"land, for a long term of years have longed into more form, and are nothing now more than a common conveyance, that "their grandeur and efficacy is lost ; and that without actual transference of the estate from one man to another, they mix with
"the community of all other alliances; that the name of these feoffments, and the remembrance of them, remains, and survives "them, however imperceptible, after the parties of making them, and consequentaitly their solidity, is gone at an end." Lord
Mansfield afterwards considered the case in a third point of view, which was, That a tenant in tail in remainder could not, by the established law of the land, suffer a common recovery, without the connet and concurrence of the immediate tenant of the freehold.
Now, this his form of the law will not prevent that he should be effected by wrong, unlawful, or indirect means, which cannot be effected by right, fair, and direct means: but for Robert could not by right, fair, or direct means, suffer a common recovery, in the life of
some Ame, without her concurrence; he never had her concurrence; it follows, that his recovery must have been connivent, and therefore void. Upon this principle the court were of opinion, all, that in Robert Adyven the fift, his entry under the verdict in 1709, was not an actual delivery, and therefore had not in him any actual effect of freehold; solely that his feoffment to James gave Mrs. an estate of freehold only in the lifetime of donee Adyven, but did not give him any actual estate of freehold; and jury, that the whole transaction was fraudulent, and therefore void. The decision upon which the first
a acer et tener a lay
et a fe ste beimes a tout
jours, et lorer a lay
fein accordan, &c.

not to have and to
hold to him and to
his heirs for ever, and
de liver to him fein ac-
gerly, &c. this is
no discontinue, be-
case none can discon-
inue the eftate tyle,
unless he discontinue
the reversion celye
that ad the reversion,
&c. or the remain-
der, if often ad
the remaining, &c. Et

sent que per tel fe-
offent fait a le
nor (the reversion
a dauges feint in luy)
son reversion ne fait
discontinue ne dis-
continue, &c. (i.
fassin pedem
ne discontinue, &c.

nor, his mortgage, and when the lefsee entreat, he shall take the
benefit of it, and if it paye-
nants be, and one of them enfeals his companion and a stranger, and make livery to
the stranger; this fluid vel in the stranger, because the livery cannot enure to his compa-

Nul peut discontinue l'estate en tyle, sauf que il discontinue le reversion,
&c. ou le remainder, &c. And therefore for this cause, if the reversion or re-

mainder be in the king, the tenant in tyle cannot discontinue the eftate tyle. (c) But tenant
in tyle, the reversion in the king might have barred the eftate tyle by a common recovery,
until the bannage of a f. h. c. and which renounces such a tenant in tyle, but that common
recovery neither barred nor discontinue the king's reversion. (1)

Note, the reversion may be revoked, and yet the discontinue remain.

As if a fee

conveyance for life, and the lesser owner further to the
 forfeiture, the forfeiture being in the remaining, and yet the reversion revoked, and the
remaining remained according to the common

L'n Mejine le maner de lay, la

terres sont dones a un bone
en tyle, le remainder a un autres
en fesse, le tenant en tyle enfeas
lifye que en le remainder, a
acer et tener a boy et a fe ste beimes;
ec ney discontinue, causa
qua rapita. (2)

L'remain a un other. Here it appears that (as hath beene 
fold in case of a
reversion) the remainder must be immediately expectant upon the eftate tyle.

(1) See Done v. Newman, 5 Cm. 497.

(2) IX. A. 4. 'A discontinue en tyle, ne as the occurrence of the remainder-man or reveressor:—The feoffment of tenant in

tail to the immediate remainder-man or reveressor in fee, has the operation of a reveressor. In this light it cannot be considered to put

a greater estate than the grantees lawfully eonoy: it does not, therefore, work a discontinuance. But if it is made to a

 Lexus; the reveressor of the reversion-man or reveressor does not prevent the discontinue, either with respect to the issues in tail, or

his own remainder or reveressor, even though the tenant in tail die without having issue. Thus, in Baker v. Hackington, 3 Cm. 487

J. C. being tenant in tail, with the immediate reversion in fee to R. C., both of them joined in a feoffment in J. C. for life. R. C. made his

will and died, and then J. C. died without issue. It was admitted, that if it were a discontinuance of the reversion, the devise, not being

bequeathed, had no power to devolve. Sir Geo. Coke was of opinion, that as there was no issue of the tenant in tail, his seffion was not a

discontinue of the reversion; he considered it as the lack of the tenant in tail during his life, and afterwards, the fault of the reveressor;

and that the reveressor's joining thereof was not the intention of the parties to dispel his estate. But the three other judges held it to be

a discontinuance on the ground, that the effect of a discontinuance is immediate, and does not depend on the tenant in tail having or

not having issue. They were all of opinion, that if the reversion was in fee, instead of being a stranger, and being in the tenant in tail him-

self, the feoffment would not discontinue, as well as of his own reveressor as of the estate of the issue in tail. But where the tenant

for life only, and his devisee is considered to put his own reveressor, the tenant for life, the feufoff; the reversion, the

remain, in fee. Hence it tenant for life, remain, in fee, remain in fee, join in a fee, it is no discontinuance to the remain-

der-man in fee. This was referred in Pedr. v. Chinnald, 1 Cm. 247, 48. on the ground, that a joint shall make a discontinuance, but

he is leste of an estate in tyle to extinguish the estate tyle.

Sect. 627.

ITEM, if an abbé hath a rever-  
  sion, or a rent service, or a  
  rent charge, and he will grant  
  this reversion, or rent service,  
  or rent charge, a an utter in  
  fee, and the tenant attornia, &c. hee will not grant

so as

ALSO, if an abbé hath a rever- 
  sion, or a rent service, or a 
  rent charge, and he will grant 
  this reversion, or rent service, or rent 
  charge, to another in fee, and 
  the tenant attornia, &c. this is 
  no discontinuance.

Of inheritances that lie in grant, sufficient hath been said before.

Sect. 628.

EN seems the manner how 
  abbe of fishe of an advow- 
  son, or of such thinges that pass 
  from a grant, shall be receiv- 
  ed, &c. &c. &c.

HERE it appeareth, (as hath beene said) that an advowson doth not lie in lieue, but in 

grant.

Sect. 629.

ITEM, if tenent in title 
  lefia fa terre a a utter by 
  terme of vie, and puis il granta 
  en fee the reversion a a utter, 
  and the tenant attornia, and puis 
  the tenant a terme of vie aliena 
  en fee, and the grantee of reversion 
  en fee, &c. et. &c. et. in the vie 
  the tenant en le title, and puis 
  the tenant en le title mortifi, son 
  nueve ne peut enter, met qni a a jus briefe of 
  formeden, pur eeo that the rever- 
  sion en fee simple which the grantee 
  avoit per grant del tenant 
  en le title, fuit execut in en 
  vie de leumne the tenant en le title, 
  and par eeo of a discontinuance 
  en fee, &c.

Of this sufficien hath beene said before.

SECT.
Sec. 630.

ET note, that **some make** different continuance for terms of life. As if tenant in tyle make a lease for life, saving the reversion to him as long as the reversion is to the tenant in tyle, or to his heires, this is no difference but during the life of tenant for life, &c. And if such tenant in tyle giveth the land to another in tyle, saving the reversion, then this is a discontinuance during the second tyle, &c.

THIS is manifest, and hath beene handled before, and needeth no explanation; only this line is to be observed, which Litterae paternae may hereof. All such continuances by feoffment, &c. hath a double entendre. First, by feoffment, or by any other conveyance which may make a discontinuance, a gait in tyle, or a lease for life, &c.

Sec. 631.

**M.B.** loue the tenant in tyle make a lease for yeares or for life, the remainder to another in fee, and delivereth livery of seisin accordingly, this is a discontinuance in fee, for that the fee simple paeth by force of the livery of seisin, &c.

This is evident alter, and hereof sufficient hath beene spoken before.

Sec. 632.

ET ofl avow, that **some such** discontinuances are made upon condition, &c. and that for the conditions be broken, &c. or for

AND it is to be understood, that some such discontinuances are made upon condition, &c. and for the conditions be broken, &c. or for discontinuance is made upon condition, &c. Here it is to be understood a discretion betweene a condition in deed, whereof of Litterae here spoken, and a condition in seisin, whereof some hath beene said before in this chapter, &c.
Chapter II.

Of Discontinuance.

Section 633.

Vis., where the feme is tenant for life, and the husband makes a feoffment in fee, and the feoffor entitled for the condition in law. Conditions fott en-

fronts, &c. Fere is implied, or any cause given either by disaffiliation of the feoffor, or by any condition performed on the part of the feoffor, or otherwise, whereby the fite is in any fore avoided.

Come, the fite is made to the certain terre in droit fa feme, &c.

Here it must be, that for the condition broken, the heir of the husband may enter for all right of benefic from the husband to his heir, yet the title of entry by force of the condition which the husband created above the feoffment, referred to him and his heir, both to the heir's heire; and that freely, that is to have been adjusted on the heir.

Sur le heire. Now, when the heire in this case hath entered for the condition broken, and the heire, the estate of the husband without any entry or claim by her or them, for the heire entered in respect of the condition, upon the real estate, and not of any right, nor have been said; and if the husband himself had re-entered, the heire had visited in his wife; and there where Lindsays books say, that the wife shall enter upon the heire, the meaning by that, after the re-entry of the heire the heire enter.

Williamson's case, ubi supra.

* The remaining part of the above Section is not in L. and M. see Buch. in Puffum, nor Mbl. As all the case of the grand-

father, father, and son, Bell. 637. is here interfered with some small variation.

yet it extends to tenants by myans-merchant, stare-hyspe, tenant at will, and tenant by sufferance, because all these have a possession. But observe, that it is otherwise of a battell for he has no possession at all; all other matters will be

TREASON herein rend-

ered by Lindsays tr. for that the husband cannot enter in his own right, but in the right of his wife; and the heire of the husband cannot enter, for no right or title defends unto him, and the wife in this case shall take benefit of the manage of her husband, and enter into the land.

If an infant be tenant for another man's life, and make a feoffment in fee, and then by his trial, the infant himself shall not enter, because he hath no right at all.

Pifer M., f. feme inheritrix que ad

un baron, que bar-

on diem aeg, et il-

efent de dies age fait

un feoffment de ses
tenements fome en

fee, et moruit, il ad

effe quesion, si la

feme fai-

pott enter, ou no.

Et est semble a

eques, que l'entree

the heir, the meaning by that, after the re-entry of the heire the heire enter.

Williamson's case, ubi supra.

A L S O, if a woman inheritrix hath a husband who is within age, and he being within age make a feoffment of the tenements of his wife in fee, and dieth, it hath been a question, if the wife may enter or not, &c. And it seems to fome, that the

Section 633.