feme after the death of her husband. If the husband within age take to wife some tenant in male generation, and the husband makes such feoffment, &c. he might well enter, notwithstanding such feoffment, &c. during the coverture; and he could not enter in his owne right, but in the right of his wife: 

"feme, &c. feme, &c. feme, &c. feme after her decease."

his blood alfo which is corrupted; and therefore in that case he is driven to his foramen.

If husband and wife be both within age, and they by deed intant edjoyce in a feoffment referring a rent, the husband, the wife may enter, or have a due fuit infra etatem. But if the wife be of full age, the faltl shall not have a due fuit infra etatem, for the nounce of her husband, albeit they be but one person in law.

Sect. 634.

AND it hath beene said, that if two joynent mens being within age make a feoffment in fee, and one of the infants die, and the other surviveth; in as much as both the infants might enter joyntly in their lives, this right accrue all to him which surviveth, and therefore hee that surviveth may enter into the whole, &c. And also the heire of the husband which made the feoffment within age cannot enter, &c. because no right descenteth to such heire in the cafe aforesaid, for that the husband had never any thing but in right of his wife, &c.

POART enter in the entierie, &c. And the reason hereof is implied in this (Ecc.) E E 30. 9, &c. 2. Bre. Por. 6, 8, 9, 10, 11."

nongne of the other. In this case, if one joyneth not made a feoffment in fee and died, the right should not have survived, for the joynature was forced for a time. If two joynen-

ments are, and the one is of full age, and the other within age, and both they make a feoff-

ment in fee, and he of full age died, the infant shall enter, or have a

See of this in the Chapter of

JOYNENT. (S. Rep. Washington's case.)

& Rep. 44.)

AND also when an infant make a 
feoffment being within age, this shall neither grieve nor hurt him, but that he may well enter, 
&c., for it should be against reason, that such feoffment made by him that was not able to make 
such a feoffment, shall grieve or hurt another, to take them from their entrance, &c. And for these rea-
sons it feemeth to fome, that after the death of such husband fo being within age at the time of the feoff-
ment, &c., that his wife may well enter, &c.

Mes que il poit enter bien, &c. Here is implied, that he might enter either
within age, or at any time after full age, and likewise after his death his heir may enter.

Mois prendre en considération favot pres dent de

Note. A special heire shall take advantage of the infanct for the ancestor. As if tenant
in tale of an acre of the custome of borrow English make a feoffment in fee within age, and death, the youngif gentleman shall avoid it; for he be privie in blood, and claimeth from deferent from the infant. And if so tenant in tale to him and the heires females of his bodie make a feoffment in fee and death within age, having issue a fome and a daughter, the daughter shall avoid the feoffment. And note, that a cause to enter by reason of infanct is not like to conditions, war-
ranties, and efsoppels, which ever deferent to the heire at the common law.
The residue of this Section upon that which hath been said is evident.

Sec. 636.

Surrender, for a

redemtion, pro

erably is a yielding up

of an estate for

life or years to the

entraille an immediate estate in

reversion or remain-

der, whereby the estate

for life or years may

drown by mutual

agreement between

them. (1)

ITE M, si feme en-
tertrix pret bari-

er, et ont ille fite,
et le baron quadr, et

et pret enbar beu,
et le second baron leja

t la terre qui il ad en
droit fome un au-

(1) A surrender differs from a release in this respect, that the releasee operates by the greater estate's defending upon the less - a surrender is the falling of a life estate into a greater. As there is necessarily a privy of estate between the surrenderor and the surrenderee, no liberty of freehold is necessary to a perfect surrender. See 2 Bla. Com. 114. In Thompson v. Latch, 1 Salk. 613, the court holds, that a surrender immediately divests the estate out of the surrenderor, and vests it in the surrenderor; for this is a conveyance at common law, to the preclusion of which no other act is requisite but the bare grant itself, and that, too, its true, that every grant is a contract, and there must be an alto consensvo pactum, but that every contract is implied, that a grant imports a bargain that an attempt to take a benefit may well be performed, and that he who shall make the same real that why a surrenderer should vest the estate before notice or agreement, as why a grant of goods should vest a property on binding of a bond to another in his absente, should be the oblige's bond, immediately without notice.

made by persons having estates left then freedhold. Brand gives expressly mentions guardians, tenters for years, by suffurances at will, by diffidence, or intimation, as persons whose freehold are attended with the effect defribed above. So does Sir Edward Coke in the passage cited from the 1st Indenture. So Perkins, Bd. 103. "If life for years encloses a fomer, the leftee being upon

"the land, yet the land shall pass by the feoffment; but poother, if the tenant is upon the land, claiming the same for the

feoffment, thit committeth an entry for a

and the reason why it passed by such a feoffment, inasmuch the fomer had

nothing to do, to middle with the possession of the land during the term." So Dyer, 368, 6. A termor for 100 years much a feoffment, by the words given is of ages, which is made of ages, which is made of a termor, the land be by the feoffment, so that the

leftee might enter for the feoffment or whether the term passed by the old words. The very same shows that it was taken for granted, that without these words the freedhold would vest in the feoffment. In the margin of that case is said, that in the case of the land of Mrs. Chard v. Earling (reported in Cos. 212) it was hold that, the leftee for years might make a feoffment notwithstanding the prudence of the leftee, and that it was a forfeiture of the land for though the leftee had the possession and might dispose of it, yet the leftee might enter for the feoffment. Thus, in the case of Wilmot v. Bough, in William June 334, the judges holds that when tenant it makes a lease rendell, and by that time, that is no disaffiance, but that the daffiance of the leftee's fomt, for they, it never shall be a difficulty, unless there be the claim of a fomer by entry to have the freedhold, or unless the author of the land gives the security of the land, or unless any other declares his intenion, which takes it by diffidence. Here the two kinds of daffiance are contrasted in the most direct and positive manner. The policy displaces in the case of Wilmot v. Bough, cited Matthew Taylor's case, 36 Bliz. C. B. Tenant at will, or for years, makes a feoffment in fee, and dies, his wife brings action against the fomer, who looked on wrong with the deceased, but the whole court was against him for in the instant the fee was vested. In 12 Com. IV. 41 ante, 35 Com. 664, that daffiance is commented on the ground that the fulin of the feoffment was but monstrous: but this proves the policy attempted to be satisfaffed for. So for the feoffment
ter pur turme de fa vie, et puis la feme mourut, et puis le tenant a terme de vie fur rendu son esfite a le second harand, &c. quene, si le fistic feme poit enter en ecel cas fur le second harand durant la vie le tenant a terme de vie, &c. Mes il eft cleere ley, que apres la mort le tenant a terme de vie, le fits la feme poit enter; pur eco que le discontinuance, que fait tautefament pur terme de vie, ef determine, &c. po le mort de meijne le tenant a terme de vie &c.

McCorinthian text, this future interell cannot be furrendeed, wherein it is drewon, as a by a furrender in law it may before McCorinthian take a new lease for yeares either to begin this, is a furrender in law of the former lease. Bocier & acquier de relyves legit quoddam domini. (3.)

(3) Allo there is a furrender without deed, whereas Limites putruth here upon an example of an estate fur the life of lands, which may be furrendeed without deed, and without consideration because it is but a yeelding, or a reflowing of the fluxe againe to him in the immediate reverie or remainder, which are always favoured in law. And there is also a furrender by deed, in which is is yeelded that lye in lands, wherein particular elate cannot be furrendeed without deed, and by consequene the esfite cannot be furrendeed without deed. But in the example that Limites here putruth, the esfite might commence without deed, and therefore might be furrendeed without deed. And altogther a particular estate be made of lands by deed in respect of the nature and quality of the thing demised, because the particular estate might have beene made without deed; and so on the other fide. If a man be tenant by the councellie, or tenant in dower of an edifice, rent, or other thing that lies in grant; albeit the esfite begin without deed, yea in respect of the nature and quality of the thing that lies in grant, it cannot be furrendeed without deed. And so if a lease for life be made of lands, the remainder for life, albeit the remainder begin without deed, yealt because remainder and reversions, though they be of lands, are things that lie in grant, they cannot be furrendeed without deed. See in my Report full matter of furrenders.

Quene, si le fiste in fome poit enter, &c. Here Limites makeoth a quere. So as there may be no demised without any impostitio to men; for the most learned doubtful meant, and the more ignorne for the most part are the more landes and peremptory. It is holde of time, that after the furrender the fite in talle during the life of tenant for life may enter; for that thing regard to the fite, the fite for life is drownen, and consequently the inheritance gained by the lease is by the acceptance of the furrender and not as a person in talle make a lease for life, whereby he gaineth a new reveracion (as hath beene

* Or not in L. and M. nor Roh.
* Or added L. and M. and Roh.

(1) By the 29. Ch. II. c. 5. febl. 3. no lease, &c. either of freeded or term of years, or any uncertain interest, not being coupable or contemnuor interest, shall be furrendeed, unless it be by deed or note in writing, signed by the party furrendeed the same, or his agents therunto lawfully authorized by writing, or by any other mode of law. Under the act it was held, by lord chief-justice Gilbert, in Magness v. Misscollib, Gilba. Ca. in 567, that a lease for years cannot be furrendeed by canelling of the indenture without writing; because the intent of that statute was to take away the manner they formerly had of transferring interests to lands, by fites, and in respect of the nature and quality of the thing demised, because the particular estate might have been made without deed; and so on the other side. If a man be tenant by the council, or tenant in dower of a building, rent, or other thing that lies in grant; albeit the estate begin without deed, yea in respect of the nature and quality of the things that lies in grant, it cannot be furrendeed without deed. And so if a lease for life be made of lands, the remainder for life, albeit the remainder begin without deed, yet because remainder and reversion, though they be of lands, are things that lie in grant, they cannot be furrendeed without deed. See in my Report full matter of furrenders.

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(4) By the 29. Ch. II. c. 5. febl. 3. no lease, &c. either of freeded or term of years, or any uncertain interest, not being coupable or contemnuor interest, shall be furrendeed, unless it be by deed or note in writing, signed by the party furrendeed the same, or his agents therunto lawfully authorized by writing, or by any other mode of law. Under the act it was held, by lord chief-justice Gilbert, in Magness v. Misscollib, Gilba. Ca. in 567, that a lease for years cannot be furrendeed by canelling of the indenture without writing; because the intent of that statute was to take away the manner they formerly had of transferring interests to lands, by fites, and in respect of the nature and quality of the thing demised, because the particular estate might have been made without deed; and so on the other side. If a man be tenant by the council, or tenant in dower of a building, rent, or other thing that lies in grant; albeit the estate begin without deed, yea in respect of the nature and quality of the things that lies in grant, it cannot be furrendeed without deed. And so if a lease for life be made of lands, the remainder for life, albeit the remainder begin without deed, yet because remainder and reversion, though they be of lands, are things that lie in grant, they cannot be furrendeed without deed. See in my Report full matter of furrenders.

(5) By the 29. Ch. II. c. 5. febl. 3. no lease, &c. either of freeded or term of years, or any uncertain interest, not being coupable or contemnuor interest, shall be furrendeed, unless it be by deed or note in writing, signed by the party furrendeed the same, or his agents therunto lawfully authorized by writing, or by any other mode of law. Under the act it was held, by lord chief-justice Gilbert, in Magness v. Misscollib, Gilba. Ca. in 567, that a lease for years cannot be furrendeed by canelling of the indenture without writing; because the intent of that statute was to take away the manner they formerly had of transferring interests to lands, by fites, and in respect of the nature and quality of the thing demised, because the particular estate might have been made without deed; and so on the other side. If a man be tenant by the council, or tenant in dower of a building, rent, or other thing that lies in grant; albeit the estate begin without deed, yea in respect of the nature and quality of the things that lies in grant, it cannot be furrendeed without deed. And so if a lease for life be made of lands, the remainder for life, albeit the remainder begin without deed, yet because remainder and reversion, though they be of lands, are things that lie in grant, they cannot be furrendeed without deed. See in my Report full matter of furrenders.

Footnote in this case only gave a frehold at the election of the reviveress, the foeller had no fear. The same doctrine seems to be laid down here. Have occasion to mention a fact (written by tenant as will, he dies. If they meet a a wrong thereby, they must have another method; as this could not work a difficul on the trustees and turn their effect to a right, which they were tenants at will to the trustees. This way indeed they might do, according to the difficul taken in an instance, which they executed a foeller of this nature. On the other hand it is a foeller on the land which is a difficult on the land, and such is the will put on it on the land to put the effect to a right. In the same manner, 3. Ark. 339, his jurisdicr fite, and then enter into my tenant, he does not gain such a positio to levy a new thorns, which he continues in positio; for a wrong-done to gain a positio by difficul, may still step on the land, and without and leave the rightful owner in positio, which would be sufficient to give a quiton to a foeller, but not to levy a right. In every cause of this kind, the main deceit of a positio, definition of restitution, and expiation of powers, must be recognised. Citations and arguments to prove the point before us, might be easily multiplied 3 but there shall be concluded here, by some obsercons upon the allowed effect of a new lease by a tenant for years, or even by a tenant as aforesayd, who has previously made a foeller. No point of our law is more clearly stated, than that, unless
Of Discontinuance.  

Sec. 637.

"bene fide" if tenant for life surrender to the tenant in tail, the estate for life being dowered, the revocation gained by wrong is voided and gone, and he is tenant in tail again against the opinion of Porteous, in Porteous v. 31, 246, 249.

But herein are two diversities worthy of observation. The first is, that having regard to the parties to the surrender, the estate is absolutely dowered, as in this case between the lessee and the freedon baron. But having regard to strangers, who were not parties or privies therein, are not so dowered, but the party surrendering might sell the estate, by consent, to the party to the surrender, who shall not have the estate for life, but the estate for life of tenant for life; for this surrender shall work no prejudice to the grantor who is a stranger.

"So if tenant for life surrender to him in revocatory being within age, he shall not have his age; for that should be a prejudice to a stranger, who is to become demaundant in a real action. If tenant for life grant a rent charge, and after surrender, yet the rent remaineth, for to do otherwise would be a prejudice in under life under the law of the land. If he be appled to be saved a charge in fee, the tenant of the land encondo the bifehold and his sescofor, and the lease, and the lessee; and if the lessor come to the land in his late life, the estate for life of the lessee shall be saved by the law of the land. If he be appled to be saved a charge in fee, the lessee shall hold it discharged of the rent; for the estate for the mortmain affirmeth the alienation in mortmain, and the lord claimeth under his estate; but if tenant for life grant a rent in fee, and after issue in the grantee, the lessee shall hold it discharged of the rent in fee, and the lessee is revived for the lessee, and the lessor claimeth above the bifehold. If I grant the revocation of my tenant for life for another for terms of his life, and tenant for life issue, now the waste of tenant for life is dispensable. (a) Afterwards I recede to the grantee for life and his heirs, or grant the revocation to him and his heirs; nor albeit the tenant for life be a stranger to it, yet because he attorned to the grantee for life, the estate for life which the grantor had shall have no continuance in the eye of the law as to him, but he shall be punished for waste done afterward.

"The second diversitie is, that for the benefit of an eftor the estate for life is absolutely determined. As if he he in the revocation make a lease for years, or grant a rent charge, etc., and then make a revocation for life surrender, the lessee or rent shall commence from the death of the lessee, and the grantor's son shall have the estate of life. And if the lessee, first, before the lessee and the second husband, the estate for life is determined; and, in the event of the death of the lessee it shall be so adjudged in law. Here a doctrine, when it is to the prejudice of a stranger, and when it is for the prejudice of a lessee. If a man maketh a lease to A. for life, referring a rent of 40 dillsings to him and his heirs, the remainder to B. For life, the lessee grant the revocation in fee to B. A. attorne, B. shall not have the rent; for that although the insead doe drowne to the lessee for the remainder life to them, yet as to a stranger it is ine fffe; and therefore B. shall not have the rent, but the lessee shall have it.

A judgment of an hospital being a sole corporation, by the consent of his brethren makes a lease for years of part of the possessions of the hospital; afterwards the lessee for years is made master, the term is drownden; and a man cannot have a term for years in his own right and a freehold in a term. And therefore, if a man have a freehold in his own right and a term in a term, and therefore if a man take the term for years to him, and the term is not drowndened, but he is possesse of the term in her right during the coverture [2] So if a lessee make the lessee his estate, the lessee is not drowndened, and it is not his estate. But if he had been a corporation aggregate of many, the making of the lessee master had not extinguished the terms, no more than if the lessee had been made one of the brethren of the hospital.
By reason of warranty, &c. As if there be grand-father, father, and son, and the grand-father is tenant in tail, and is dispitied by the son who is his son, and the father maketh a feoffment of this warranty without warranty and die, and afterwards the grand-father dies, the son may well enter upon the benefice, because this was no disannulment, in which the father was not feited by force of the entail at the time of the feoffment, &c. but was feited in fee by the discretion of the grandfather.

This, although he that made the conveyance was never feited by force of the entail, because it taketh away the entail of him that right hath, as a disannulment doth. As if tenant in tail be dispitied and died, and the issue in tail relapse to the disfidor with warranty; in this case the issue was never feited by force of the entail; and yet this hath the effect of a disannulment by reason of the warranty, and the warranty thereof appearreth before in this Chapter.

Le fez pour entier. But if the father that made the feoffment had survived the grand-father, he should never have entered against his own feoffment; but albeit the father had survived, yet after his decease the son should have entered, for the reason that, as said, by Lisbon. But if the feoffment had been with warranty, then it had wrought the effect of a disannulment; and therefore Lisaon faith that & warranty, without warranty.

ITEM, if tenant in tail make a lease to another for terme of life, and the tenant in tail hath issue and die, and the reversion descendeth to son issue, and that issue granteth the reversion to his denergy, a son in fee, and the tenant to terme of atornyne + and die, and the grantee of the reversion enter, &c. if el fesse in fee in the vie of the life, and issue in the tail ad issue fites et devis, it fall

also, if tenant in tail make a lease to another for terme of life, and the tenant in tail hath issue and die, and the reversion descendeth to his issue, and after the issue granteth the reversion to him descended, to another in fee, and the tenant for life attorne and die, and the grantee of the reversion enter, &c. and is feited in fee in the vie of the issue, and after the issue in tail hath

* et l'el fesse tenant en tail, et el fesse for le pieur que el fesse, not in L. and M. + et devis, et l'grantee del reversion enter, &c. et el l'entier tendente de vie moyen, et el fesse en l'entier enter, &c. and L. and Roi.

If a son and dieth, it seems that this is no discontinuance to the son, but that the son may enter, &c. for that his father, to whom the reversion of the fee simple descended, had never any thing in the land by force of the entail, 

Of this opinion is Lightfoot in our book.

The grantee of the reversion enter, &c. Here it is to be understood and observed, that in this case of the grant of the reversion, Lightfoot doth not say fees general; because if a warrantee had been added, it had wrought no discontinuance, for that (as hath been said) the discontinuance in judgment of law was but for life; but when the addition of a warrantee doth work a discontinuance, then Lightfoot, faith, not generally, so you may observe often in this Chapter.

Sect. 639.

Car si home seyse en droit de femme, il fa me same la terre a un autre par terme de vie, ore est le reversion de fee simple a le baron, &c. Et si le baron morra vivant fa femme et le tenant a terme de vie, & et le reversion disenda a beire le baron, si le beire le baron grant le reversion a un autre en fee, et le tenant attorna, &c. et pue le tenant a terme de vie morra, et le grantee del reversion en ce cas enter:

For a man seyse in the right of his wife, let him seyse land to another for term of life, now is the reversion of the fee simple to the husband, &c. And if the husband dieth, living his wife and the tenant for life, and the reversion descend to the heir of the husband, if the heir of the husband grant the reversion to another in fee, and the tenant attorne, &c. and afterwards the tenant for life dieth, and the grantee of the reversion in this case enter:

Car si home seyse en droit de femme, il fa. Here Lightfoot putth his case where the baron only makes a lease for life; for if he and his wife payen in a lease by deed, there the reversion is not discontinuance. See before, Sect. 620. More need not to be said hereof, in regard the like case of tenant in tail hath been explained before.

* or not in L. and M. nor Rolls. 
† en cefi cas not in L. and M. nor Rolls. 

been confusingly and uniformly allowed or attributed to them by the courts of judicature, or writers of authority contemporary with or subsequecnt to that monarch's reign; down to the present time, ought, notwithstanding the objection that they are not now made with some of the solemnities with which they are said to have been made in their very earliest instances, to be allowed and attributed to them now: that, by the phrase cited from Bolland, and the other authorities cited or referred to in the course of this note, it appears, that the difficulties produced by feoffments must be understood to be a real difficulty, and not a difficulty merely at the creation of the party: 1stlly, that in many of those authorities it is more expressly mentioned, and that in all of them it must be implied, that however solemn, bare, or serious, the putation of the feoffee in his feoffment necessarily and unavoidably with the feoffment in the feoffor, till the difficulties by way of action remove his putation: 2ndly, (to apply this doctrine and accompanied turning to the present feudal-maker of individuum) that coplainers, tenants for years, by efect, free-commoners, name-dispar, it will, or by suffrage, are all confederate to have the putation of the other, and that they may by feoffment sell an annual estate of feehold in the feoffee: 3rdly, that a fee may be acquired of a common recovery suffered open, this estate of feehold: 4thly, that the feoffment so executed, the sale so levied, and the recovery so suffered, are immediately good against every person except the rightful owner: and, 5thly, that in course of time they become good against the owner himself. To ascertain the exact period of time when fees levied by portions of this description will be a bar to the rightful owner, would be too great an extension of this note, the length of which already requires an apology. —As to the second objection, that the feoffment of Sir Robert Alkyn, was founded in form, and was therefore void; it is to be observed, that however that reasoning applied to the particular case before the courts, it does not apply to the general question discussed in this note, which presupposes
Sect. 640.

AND it so feemeth, that men (s. Rom. 6:15; 1 Tim. 6:10) which are inheritable by force of an entale, and never were feised by force of the same entale, that such feestments or grants by them made without claus of warrantie, is no discontinuance to their issues after their decease, but that their issue may well enter, &c. albeit they which made such grants in their lives were forebarred to enter by their own act, &c.

Sect. 641.

AND if tenant in tail hath if the two sonnes, and the eldest diffuseth his father, and thereof insketh a feestment in fee without claus of warrantie, and die without issue, and after the father die, the youngest son may well enter upon the feestment, for that the feestment of his elder brother cannot be a discontinuance, because he was never feised by force of the same title. For it feemeth to be against reason, that by matter in fact, &c. without claus of warrantie, a man should discontinue a deed, &c. that was never feised by force of the same title.

NOTE, there also in these two Sections appearreth, that (as hath beene said before) there is no discontinuance, though he were never feised by force of the tail, may work the effect of his.

Home post disconoinuer un fait, &c. This is mistaken, and should be, home post disconimueur en taille; and so is the original.

previous polllusion in the feesom, free from every circumstance of land; either fair and innocent, or acquired by the open and notorious circumstantialiation of different abatement, intromission, or defacement. Sir Robert Aylyns acquired his polllision by the entry made by him under the seaus of a gentleman obtained by him in 1760. He left it to the respectfull given for same Anna Alys in 1770. It may, therefore, be said (and the fact really was), that he obtained the respectfull given for him in 1760, and consequently the polllision under it, by a pretended title. He had not a fair or innocent polllision. He did not acquire his polllision by different abatement, intromission, or defacement; it did not depend upon him; it did not come to him by all of law; he was not in the title of the fee by waiver of any fees or dearest from the freeholder; he obtained his polllision by the judgment of a court of law, under the colour of a pretended title. Thus, in the language of the law, his original polllision was founded in fraud, perfidy, and artifices. And so in an expression of the judges, 3 Rep. 78 n. "the common law does in either fraud and perfidy, that all acts as well as others, which of themselves are just and lawful, yet being mixed with fraud and decease, are in judgment of law "wretched and unlawful."—In Bour. 1.6, great fees were laid on the conclusion of the judges in Fermon's case. The court there said, that Thomas Smith being feised in fee of several lands, and holding others by copy of courts-bail and others for a term of years, and others at will (all of them lying in the same will), made a feestment with livery of all lands held by copy for years, and at will, to one Choppard for life, and afterwards lived a fee. The question was, Whether the free was a lie to the owners of the free, at the expiration of the half free years. It appeared that Smith continued in possession of the land, and paid the rents. Sour. 2. Rep. 72. 1. 460, Corg. 50. Cir. Ellis. 86. The judges were of opinion, that the feestment was fraudulent. Upon an examination of the different reports of the case, it will be found, that he continued in the possession of the land, and paying rent after
Sect. 642.

NOTE, if there be lord and tenant, and the tenant given lands to another in taile, the remainder to another in fee, and after the tenant in taile makes a lease to a man for a term of life, &c. saving the reversion, &c. and after granteth the reversion to another in fee, and the tenant for lifetime, &c. and after the grantee of the reversion die without heir, now the same reversion commeth to the lord by way of echeate. If in this case the tenant for life dieth, and the lord by force of his echeate enter in the life of tenant in taile, and after the tenant in taile dieth, it seemeth in this case that this is no discontinuance to the issue in taile, nor to him in the remainder, but that he may well enter, because the lord is in by way of echeate, and not by the tenant in taile. But otherwise it should be, if the reversion had beene executed in the grantee, in the life of tenant in taile, for then had the grantee beene in the tenements by the tenant in taile, &c.

Vide Sect. 640.


Sect. 643, 644, & 645.

PARCEL de son ITEM, si un parson gie, &c. In fon d'un oeil de, whom the fee simple of the au sieur d'un car of a church alien oeil

NOTE—Bem, L. and M. and Roh.

† taile, le remainder a un au xer en not in L. and M. and Roh.

† Sr. not in L. and M. and Roh.

after he made the feoffment, were the chief circumstances which induced the court to consider the feoffment to be frustrate. The same may be referred to the case of White v. Bracm, Saville 216. The continuing in the possession of the land after the conveyance, has always been considered in our law as a badge of fraud. Pernot's case therefore only proves that if a tenant for years, after making a feoffment, continues in the possession of the land, and pays rent for it, the feoffment acquired by him under the feoffment is fraudulent; and therefore a fine, and every other fine which derives its effect from that possession, is void. But Pernot's case does not apply to the general question, of the operation of a fine levied by tenant for years, who has previously executed a feoffment, when the feoffment is not affected by circumstances of fraud. The case referred to in this note is Whitby v. Tannard, 217. Tannard is directly in point, that a fine is levied by the judge for years in bar or by the judge by the law of fines. The former case is to be distinguished from that of Lord Hardwicke, (3 Atk. 463.) which seems to be quite contrary in some respects; the general rule of fraud contained in this note:—44 if it be a mere legal fine, and the claimant purports to be the person who had the right, however this would be carrying it much too far; for the defeal upon the face of the deeds is often the occasion of the fine's being levied.
Of Discontinuance.  

Sec. 644.

egifet, alien certaine
terres ou tenements
parcels de fon glebe,
&c. a un autre en
fee, et maroiz, ou re
signe, &c. fon succes
seor poit bien enter,
nent contrayent teli
aliation, as is said in
a Nota 2. H. 4. Termes Mecho. which begin
neth thus.

certaine lands or te
nements parcel of
his glebe, &c. to
another in fee, and die
or resigne, &c. his suc
cessor may well enter,
notwithstanding such
alienation, as is said in
a Nota 2. H. 4. Termes Mecho. which begin
neth thus.

glebe is, is a question in
our books.  [2] Some hold that it
is in the patron; but that can
not be for two reasons. First,
for that in the beginning the
land was given to the patron
and his successors, and the
patron is no successor. Sec
condly, the words of the
writ of juris prud. be, si fit
libera incognita ecclesie de
D. and not of the patron.
Some others doe hold that
the fee simple is in the patron
and ordinary; but this cannot
be, for the cause above said;
and therefore, of necessity, the
fee simple is in fee simple, as
Liberon faite. And this was
provided by the provisyon
and wills of the law; for
that the patron and vicar have
curant animam, and we be
bound to celebrite divine
service, and administer the
sacraments; and therefore no
act of the predator should
make a discontinuance to
take away the entry of the
successor, and to drive him to
a new election, whereby he
should be delirous of maintenance
in the mean time. Upon con
firmation of all our books I
observe this diversité: that a
parson or vicar, for the bene
fit of the church and of his
successor, is in some cases
enframed in law to have a fee
simple qualified; but to do
any thing in the prejudice of
his successor in many cases,
the law adjudgeth him to have
in effect but an estate for life.

Canse ecclesie publicis causi
decipratorum: et tam summa ra
tio et que placuit, signis faciendis.

Canse ecclesie publicis causi
decipratorum: et tam summa ra
tio et que placuit, signis faciendis.

As a parson, vicar, arch
deson, prebend, chanter
privile, and the like, may have
an action of wales and in
the warts it shall be paid, ad
bractuainment ecclesie, &c.
ingentur &c. in praebendis digni
nus A.

And the parson, &c. that
make a lease for life, shall
have a feu de vie during
the

* vers un chapiteau—d'un chapel. L. and M. and Rol.

4 ed. 1. and M. and P.d.
the life of the lessee, and a writ of entríe ad communem
legem after his death, or a
writ ad terminum quit per-
teritum, or a quick partitura
in the order, and none can main-
tain any of these writs, but
a tenant in fee simple or fee
temple.

And a parson, &c. may re-
ceive homage, which tenuis

Likewise a parson, &c.
shall have a writ of mefior,
and a compotum firmato-
ment.

But a parson cannot make a
discontinuance, as Littleton
here teaches; for that should
be to the prejudice of his suc-
cessor to take away his estate,
and to drive him to a real
action.

Also if a parson &c. make
a lease for years, referring
a rent, and death, the lease is
determined by his death; as if
tenant for life had made a
lease, no acceptance of the rent
by the successor can make it
good. Also in a real action
a parson, vicar, archdeacon,
prebend, &c. shall have aid
of the patron and ordinariy,
as tenant for life shall have.
So as it is evident, that to
many purposes a parson hath
an interest in the use for life,
and to the issues of his estate,
and is the reason that he cannot
discontinue the fee simple that
he hath no, nor ever had; for,
as hath been said, Comes prima
ius pugnante libitum. And
for the same cause he cannot have a writ of right right, nor a writ of right in his nature; as a writ of right for disclaimer of curtales and coverages, no injunctures, rationabilius divitias.

But here it appears by Littleton,
that such bodies politic or corporate as have a sole fel-
fin, and may have a writ of right, for that the fee and right is in them (albeit they cannot abs-
solutely convey away their lands, &c. without affent of others), may make a discontinuance:

for a bishop, or abbot, a dean, a master of an hospital, and the like. But this is to be understood where a dean or a master of an hospital, &c. are solely elected of definite positions:

And if the body that is feigned be aggregate of many, as the dean and chapter, master and confreres, &c. then the feuement of the dean or master is to be from a discontinuance as it is a difficilum.

And the fees that have the fee and right shall not have aid in respect of their high and
large estates, albeit any of them be prefetable; but a dean that is collective shall have aid of
the king.

And it is to be observed, that the remedy is over agreeable to the right; and therefore the
bishop, dean, master of an hospital, that hath college and common seal, or the like, shall have a writ of right right, which is the highest remedy, for that they have the highest estate.

Here

[49. Sect. 645.

FOR a bishop may
have a writ of right of
the tenements of the
right of his church,
for that the right is in
his chapter, and the
fee simple abideth in
him and in his chap-
ter. And a dean may
have a writ of right,
because the right re-
marynes in him. And
an abbot may have a
writ of right, for that
the right remaynes in
him and in his co-
vent. And a master of
an hospital may have
a writ of right, because
the right remayneth
in him and in his con-
freres, &c. And
of other like cases.

But a parson or vicar
cannot have a writ of
right, &c.
Here Litterius cited the book of St. H. 4. as an authority whereupon he grounded his opinion. And it is to be observed, that the year of St. H. 4. were published before Litterius did write.

But at this day, the bishop, dean, master, or any of the officers, or the like, that have the fee and right in them, as hath beene said, cannot distinguish; neither can they or any parson, vicar, archdeacon, prebend, or any other having any ecclesiastical living, with silence of dean and chapter, patron and ordinary, or the concert of any others, make any last, gift, grant, conveyance, effete, charge or incumbrance to bind his successor other than for terms of one and twentye years, or three lives in possession, whereupon the accustomd rent or more shall be referred. These be excellent laws, and have beene well expounded for the maintenance of religion and the good of God’s church; for otherwise it is to be feared that holy church would lose more than it would gaine in these days.

But where Litterius, in this and other Secciones, makes mention of masters of hospitals, the reader must know, that since Litterius wrote, there hath beene a great alteration made by divers acts of parliament concerning hospitals.

Master del hospitali. These points concerning hospitals were resolved [c] by the justices.

First, that no hospital was given to the crown by the statute of 37. H. 8. nor any hospital is within the statute of 31. H. 8. of monasteries, but only religious and ecclesiastical hospitals, and that no lay hospital was within those statutes.

Secondly, if upon the foundation of any lay hospital or after it was ordained, that one or divers priests should be maintained within the hospital to celebrate divine service to the poor, and to pray for the soul of the founder, and all christians souls, or the like; and that the poor of such hospital should make the like offerings, yet such a hospital is not within the said statutes; for the hospital is lay, and not religious; and all or the most part of ancient lay hospitals were founded or ordained after the like sort; and the makers of those statutes never intended to overthrow works of charity, but to take away the abuse.

Thirdly, that no hospital was given to the king by the statute of 37. H. 8. but in two cafes, where the donors, founders or patrons, &c. had curted and expended the priets, wardens, &c. between the fourth day of February, Anno 37. H. 8. and the five and twentieth of December, Anno 37. H. 8. or where king Henry the eighth, by commissary according to that act, should enter and feile the same; but that determined by the death of that king.

Fourthly, that the statute of 1. E. 6. extended not to any hospital whatsoever, either lay or religious, as by the same appeareth.

And it was determined with the lord Cheney in this cafe, which, seeing it may do good for maintenance of charitable uses, I thought good sufficiently to report it. To this I will add, Panis prosperum vina prosperum sui defeundus corvis fanginosis eft. Note, Of hospitals, none are corporations aggregate of many; as of master or wardens, &c. and his conferences; some, where the master or wardens hath only the estate of inheritance in him, and the brentren or fitter power to content, having college and common feale; some, where the master or wardens hath the force in him, but hath no college and common seale; and such a master or wardens shall have a juris utrim; and of these hospitals some be eligible, some donative; and some preentable.

BUT the highest writ that they can have is the writ of juris utrim, which is a great proof that the right of fee is not in them, nor in any others, &c. But the right of the fee simple is in abstinence, that is to say, that it is only in the remembrance, indintement and consideration of the law, &c. for it feemeth to me, that these hospitals are so far from being charged with the abstinence in them, that they are most in abstinence, which is the truth in the case.
Oft Discontinuance. Sect. 467.

that such a thing and such a right which is fay in divers books to be in abeyance, is as much to fay in Latine (ciciliet), Tallis res, vel tale rectum, quam vel quod non est in homine aducne superfluisse, sed tantummodo eft, et conffituit in confideratione et intellegendi legis, et quod aliæ dissipat, talem rem aut tale rectum fore in nubibus. Mes en supposé que ils intendent per ceux parols, in nubibus, ceci cone fay oye dit adevante. §

EN abeinance. (1) That is, in the fequeftration of the French word abeinance, to expref. For

when a parson dieth, we say that the fequeftration is in abeyance, becaufe a fucceflor is in expectation to take it, and here note the neceffity of the true interpretation of words.

If tenant par termes d'autre vie dieth, the fequeftration is faid to be in abeyance until the occu- pant entrench. If a man make a lease for life, the remainder to the right heires of f. the fee simple is in abeyance until f. dieth. And fo in the cafe of the parfon, the fee and right is in abeyance, that is, in expref. in remembrance, entendment, or confideration of law. 1. In confiderations five intellegendi legis, becaufe it is not in any man then living; and the right that is in abeyance is faid to be in nubibus, in the clouds, and therein hath a quality of fame whereof the poet speaketh:

Legiones alterius fide, et caput aliae nubibus consistit.

Sect. 467. ASLO, if a parfon of a church dieth, now the fequeftration of the glebe of the parfonage is in none during the time the parfonage is void, but in abeyance, viz. in confideration and in the underfanding of the law, un- till another be made parfon of the fame church; and immediately when another is made parfon, the fequeftration in deed is in him as fucceflor.

Sect.
ITEM, in the world, some peradventure would argue that all the parsons and vicars should be allowed to have their rents, and that the tenants of the land should not be allowed to have any rents. This is not the case, however, as the tenants have the right to their rents by the law, and the parsons and vicars have no right to interfere with this. Therefore, the tenants should continue to have their rents, as they are entitled to them by the law.

Sec. 648. If a tenant has a lease from a landlord, and the landlord sells the property to another person, the tenant is entitled to the same rent as before, as the lease is a contract between the landlord and the tenant. If the tenant fails to pay the rent, the landlord can sue for its recovery, and if the tenant is unable to pay, the landlord can obtain a judgment against him. The tenant is also entitled to the use of the premises during the term of the lease, and if the landlord is in default, the tenant can sue for specific performance of the contract, or for a refund of the rent paid in advance.

Item, also, in the case of a lease, the tenant is entitled to the use and enjoyment of the premises during the term of the lease, and if the landlord fails to deliver the premises to the tenant, or if the tenant is unable to pay the rent, the landlord can obtain a judgment against him. The tenant is also entitled to the use of the premises during the term of the lease, and if the landlord is in default, the tenant can sue for specific performance of the contract, or for a refund of the rent paid in advance.

Sec. 648. Item, also, some peradventure would argue that, in a case of this kind, the tenants should be allowed to have their rents, and that the landlord should not be allowed to interfere with this. This is not the case, however, as the tenants have the right to their rents by the law, and the landlord has no right to interfere with this. Therefore, the tenants should continue to have their rents, as they are entitled to them by the law.
charged till I. S. be dead. And so is Litton to be understood, viz. that either it may be charged in professed, or in strictu.

Obliged terre de fee simple. And so it is of lands entailed, for they may be charged in fee also; for the entail may be cut off by fine or recovery. Also the entail may continue, and yet tenant in tail may lawfully charge the land and bind the entail in tail. As it is a difference, to make a gift in tail, and the donees in consideration of the entail by the devisee of all his rights to the donees, grant a rent charge to the devisee and his heirs, proportionable to the value of his rights, this entail binds the donee in tail. Vide Sel. 1, Bridgewater's case, where a entail, which runs by the rule of Litton, may be charged; and therefore if the owner of the fee simple grants a rent-charge out of the fee simple, he runs the entail in tail generally, lying in the meaning of eighties, without mentioning where they lie particularly; there, as in the case in tail, the charge is to run in tail. But since our author wrote, all ecclesiastical persons are disqualified to charge in fee any of their ecclesiastical possessions, as before hath been spoken of at large.

Et quant iuri renti et grant, &c. This is an excellent interpretation and limitation of the said principle, viz. that some entail have prejudice or loss by such grant, but such as are partible or private scsetianu; than the patent and his successors, the ordinary and his successors, and the patent and his successors; which successors of the patent are to be preferred by the patent or his heirs, and admission of his ordinary or his successors. The like is to be said of an archdeacon, prebend, vicar. chanter, Prior, and the like.

Per le fait le parson, et patron, et l'ordinarie, &c. Yet if the patent die and the rents appertain to the patron and the affairs of the ordinary, the grant in annullity or rent-charge out of the glebe, this entail (as hath been said) binds the succeeding parsons for ever.

If there be patent, parson, and ordinary, and the parson by the ordinance and affect of

Of Discontinuance.

Sec. VI.

Of the ordinary grant or拿到 handwriting in consideration thereof, this shall bind the successor of the parson, without the consent of the patron.

A church parochial may be done and exempt from all ordinary jurisdiction, and the incumbent may resign to the patron, and not to the ordinary: neither cannot the ordinary sit, but the patron by commissioners to be appointed by him. And by Lilley's rule, the patron and incumbents may charge the glebe; and albeit it be done by a hymen, yet parce locus is as capable of it, but an sole clerics so far as arises in it; for albeit he came in by his donation, and not by admission or institution, yet his function is spiritual; and if such a cleric be disturbed, the patron shall have a greater impediment of this church donative, and the writ shall fail, quod permitte licet prestatrum ad ecclesiam, &c. and declare the special matter in his declaration. And do it is of a prebend, chantry, chapell, donative, and the like; and no laps shall accrue to the ordinary, except it be so specially provided in the foundation. But if the patent of such a church, chantry, chapell, &c. do not, such once cease to the ordinary, and his clerk be admitted and instituted, it is now become preestable, and never shall be done in the future, and then laps shall accrue to the ordinary, as it shall of other benefits preestable. But a presentation to such a donative by a stranger, and admission and institution thereupon, is merely void. And all this was received by the whole court of king's bench, for the rector parochial donative of Saint Burinius in the county of Cornwall.

In appearance by other books, and by the act 20 Geo. II. sect. 2. and 3. of 1 the first all the bishops in England were of the king's foundation, and donative per traditionem baccel, (s.e.f. the crooket, which was the pastoral staff, &c. annals, the ring whereby he was married to the church. And king Henry the first being required by the bishop of Rome to make them elective, refused it: but king John by his charter bearing date quattuor familias, anno decimo quinto, granted that the bishoprics should be eligible. If the king doth found a church, hospitall, or free chapell donative, he may exempt the same from ordinary jurisdiction, and then his canoneer flall rule the same. Nay, if the king do found the same without any special exemption, the ordinance is not, but the king's chancellor, to visit the same. Now as the king may create donatives exempt from the visitation of the ordinary, so he may by his charter license any subject to found such a church or chapell, and so ordain that it shall be donative, and not preestable, and to be visited by the bouncer, and not by the ordinary. And thus be came donatives in England, whereas common preestable were patronous.

Ordinary. Ordinary is he that hath ordinary jurisdiction in causes ecclesiastical, immediate to the king and his court of common law, for the better execution of justice, as the bishop or any other that hath admitted and immediate jurisdiction in cases ecclesiastical.

Loy tempore. Which consists of three parts, viz. First, on the common law, [Ant. 116] expounded in our books of law, and judicial records. Secondly, on statutes contained in acts and records of parliament. And thirdly, on customs grounded upon reason, and usage time and custom of mind; and the construction and determination of these do belong to the judges of the realm.

Loy spiritual. That is, the ecclesiastical laws allowed by the laws of this realm, viz. which are not against the common law (whereof the king's prerogative is a principal part) nor against the statutes and customs of the realm; and regularly according to such ecclesiastical laws, the ordinary and other ecclesiastical judges do proceed in causes within their consanguinity. And this jurisdiction was so bounded by the ancient common laws of the realm, and do declared by act of parliament.

Admission & institution. In propriety of speech, admission is, when the bishop upon examination admitted him to be able, and faithful. Admission is to habitation. [2] Institution is, when the bishop bishop, institution is, when the bishop appoints, instituit et subspendet nulli ecclesiam cum cura ministrat, & extra cursum Iam & mensas. But sometimes in a more large sense, admissio doth include institution (i.e.) institution. And it is to be observe, that institution is a good pleader against a common peril (but not against the king, unless he be instituted); and that is the cause that regularly pleader shall be tried by the bishop, because the church is full by institution, which is a spiritual act; but void or not valid shall be tried by the common law.

At the common law, if an effranger had preferred his clerk, and he had been admitted and instituted to a church, whereas any subject had been lawfull patron, the prince had to other remedy to recover his advowson, but a writ of right of advowson, wherein the
incumbent was not to be removed; and so it was at the common law, if an usurpation had been made upon an infant or some covert, having an adowment by dint of, or upon tenant for life, &c. the infant, some covert, and he in the possession were driven to their right of adowment; for at the common law, if the cause were full, the incumbent could not be removed, and plenitute generally was a good plea in a cause impedit, or affile of duraee prepotentia; and the reason of this was, to the intent that the incumbent might quietly intend and apply himself to his spiritual charge. And secondly, the law intended, that the bishop that had cede of souls within his diocese, would admit and infringe an able man for the discharge of his duties and his own; and that the bishop would bid right to every patron within his diocese. But at the common law, if any had usurped upon the king, and his prelate had been admitted, infracted, and inducted, before and after the church had not been full against the king the king might have removed him by guare impedit, and been reduced to his prepotency, for therein he hath a prerogative, quod nullius tempus occurrit regi; but he could not prepotent, for the plenitute barred him of that; neither could he remove him any way but by adowment, to the end the church might be the more quiet in the mean time. Neither did the king render damages in his guare impedit at the common law. But the said statute [4] hath altered the common law in the same aforesaid; as namely, Guave impedit auctor plenitudine ecclesie per fundum proprium prepotentia, non proprium diem plenitudinis remanet impedita, damnosum, without finis tempus occurrit, etc., and also hath provided remedy in the other cases, as by the said act appeared. [4] And if the king does prepotent to a church, and his clerke is admitted and infracted, yet before induction the king may recede and revoke his prepotency. But regularly no man can be put out of postrition of his adowment, but by adowment and infiltration upon an usurpation by a prepotency to the church, for plenalitius pro fundo proprium prepotentia, non proprium diem plenitudinis remanet impedita, damnosum, without finis tempus occurrit. And also hath provided remedy in another. It is to be obsercted, that an usurpation upon a prepotency shall not only put out of postrition him that hath right of prepotency, but right of collection also. Therefore at this day the incumbent shall be removed in a cause impedit, or affile of duraee prepotentia, if so shall not be a plenitute by fix months before the fourth of the writ; but then the incumbent shall be named in the writ, or else he shall never be removed; yet at the common law, if the ordinary refused to admit and infiltrate the clerk of the patron, or when any distrust him to prepotent, so as he could not prefer his clerke, he might have his guare impedit, or affile of duraee prepotentia; and if the church were not full, have a writ to the bishop to admit his clerke; but so odious was the same in the ears of the common law, that before the statute of W. 3. he recovered no damages. At the common law, if hanging the guare impedit against the ordinary for refusing of his clerke, and before the church were full, the patron brought a guare impedit against the bishop, and hanging the fuit, the bishop admit and infiltrate a clerke for the pretence of another, in this case it judgment be given for the patron against the bishop, the patron shall have a writ to the bishop, and remove the incumbent that came in postition by a judgment against the bishop, for he shall not be removed, but the same be removed, for cause by the bringing of such guare impedit against the ordinary, the rightfull patron might be defeated of his prepotentia; and moreover there after the statute of W. 3. among other things it was required to offer, if the church were full, and of whole prepotency, &c., and if the plenitute should have man to the bishop, his clerke might not be admitted, (as in most cases be might) yet may the rightfull incumbent have his remedy by law. And as it was good policie (as hath beene feld) to bring a guare impedit as specially as might be against the bishop, so it is good policie at this day to name the bishop in the guare impedit, for then he shall not prepotent by laps. But feigning the bishop shall not prepotent by laps because he is named in the writ, then after, that the time be devoluted to the metropolitian, shall not he prepotent by laps, because he is not named? To this it is answered, that he is not in that case prepotent by laps; for the metropolitian shall never prepotent or collate by laps after fix months, but when the intermediate ordinary might have collate by laps within the fix months, and had furtunale his time. And so it is if the time be devoluted to the king for

ITEM, he tenant in
taille ad ijue et
foit diffeur, et puis
il relefa per jou fait
tout fon droit a le dif-
fier: en cef quant il
droit de taille poit
etre en le tenant en
taille, par ce qui il
avroit releeas tout fon
droit. Et nul droit
poit eftre en l’issue en
taille durante le vie
son pere. Et tial droit
del inherance in le
taille n’est pas tout
soyemment espire per
force de tial relefa,
&c. Ergo, il coeven
t que tial droit demurt
en abeinance, ut fu-
pra, durante la vie le
tenant in taille qui relefa,
&c. et apres
il dise ou donque est
tial droit maintenant
en l’issue en faits,
&c.

ALSO, if tenant in
yyle hath isue et
is diffeur, and af-
ter he releaseth by his
deed all his right to
the diffeur: in this
case no right of tialle
can be in the tenant in
taille, becaufe hee hath
released all his right.
And no right can bee
in the issue in tialle
during the life of his
father. And such right
of the inheritance in
the tialle is not altogeth-
er expired by force of
such releas, &c.
Ergo, it must needs be
that such right re-
mains in abeinance, ut
super, during the life
of tenant in tialle that
relieseth, &c. and af-
fter his decease such
prently is in
his issue in deed, &c.

LITTLETON having de-
clared where a feu is in
abeinance, and where a feu
hold and feu is in abeinance
by act in law, and where a
feu that is in abeinance may
be charged: here he puteth
two cases where a right of an
effe tialle may be in abe-
inance by the act of the pursue,
which are so clere and evi-
dent, as there needs no further
prosec or argument, than Lit-
tleton hath justly and artifi-
cially made, albeit some objec-
tions of no weight have beene
made against it. If tenant in
taille of lands holden of the
king hee relinquished of follow
and the king after office seiz-
eth the fame, the effe tialle is
in abeinance, there to be in
suspence.

Grant for estate,
concedit statum iunior.
State or effe figneteth such
inherence, scheideth terms for
years, temporize by fa-
rute mechance, flippeth, ele-
the like, as any man hath in
lunds or tenementes, &c. And
by the grant of his effe as
much as he can grant ill
poole; as here by Littleton’s case
appeareth. Tenant for life, the
remainder in tialle, the remain-
der to the right heirs of re-
ten for life, tenant for life
grant tatum statum iunior to a
man and his heirs, both eftes
die publice.

Vide Sect. 63. 654. 575. 546.
44. 3. 10. 44. A. 38. 44. A. 5. 11. 30.
State or effe signifieth
inherence, scheideth terms for
years, temporize by fa-
rute mechance, flippeth, ele-
the like, as any man hath in
lunds or tenementes, &c. And
by the grant of his effe, as
much as he can grant ill
poole; as here by Littleton’s case
appeareth. Tenant for life, the
remainder in tialle, the remain-
der to the right heirs of re-
ten for life, tenant for life
grant tatum statum iunior to a
man and his heirs, both eftes
die publice.

Right, fuit, fee rectum. (Pl.484)
(Which Littleton often urseth)
signeteth properly, and spe-
cially in write and pled-
ings, when an effe is turned
to a right, as by discontinu-
ance, difficition, &c. where it
sholl fee fail, quiad iust de-
flendi et sua terea. But
(Right) doth also include
the effe

Of Discontinuance.

Sect. 656.

in taile, and the reversion of the title is not in the tenant in taile, because he hath granted all his estate and his right, &c. And if the tenant to whom the grant was made make waite, the tenant in taile shall not have a waite of waite, for that no reversion is in him. But the reversion and inheritance of the title, during the life of the tenant in taile, is in abeyance, that is to say, only in the remembrance, consideration, and intelligence of the law.

Interests. Interests are vulgarly taken for a term of estate real, and more particularly for a future term; in which case it is said in pleading, that he is possessed of interesse terrae.

But esse termini, in legal understanding, it extends to estates, rights, and titles, that a man hath of, in, to, or out of lands; for he is truly said to have an interest in them; and by the grant of tenement interesse fuerat in such lands, as well realisters as possessoris in fee simple shall pass. And all these words singularly spoken in societate collectivae; for by the grant of tenement ipsum fuerat in lands, all his estates therein pass. Et sic de aera, et sic de juris.

Neither ovius aorbe breve de waite, &c. So it is if tenant for life be, the remainder in title, and he in the remainder releaseth to the tenant for life, all his right and estate in the land. Hereby it is said in our books, that the estate of the lettee is not enlarged, but the releaseth ferveth to that purpose, to put the estate into abeyance, so as after that he is the remainder cannot have an action of waite; yet that same (saving reformation) the lettee for life hath an estate for the life of tenant in taile expectant upon his own life. But if the tenant in fee releaseth to his tenant for life all his right, yet he shall have an action of waite. And if tenant in title make a knye for his own life, he shall have an acretion of waite.


...
Lib. 3. Of Discontinuance. Sect. 651, 652, 653, 654. 346

Sect. 651.

ALSO, if a bishop alien lands which are parcel of his bishopricke and die, this is a discontinuance to his successor, because he cannot enter, but is put to his writ of de ingressu sine ipsis capituli.

Of this sufficient hath beene said (how this law standeth at this day) before in this Chapter.

Sect. 652.

ALSO, if a deane alien lands which he hath in right of him and his chapter, and dieth, his successor may enter. But if the deane bee sole feified as in right of his deane, then his alienation is a discontinuance to his successor, as is said before.

HEREOF also that which was necessary is before said in this Chapter, and Luttrell's

Sect. 653.

ALSO, peradventure some will argue and say, that if an abbot and his convent alien lands to them and to their successors, &c. and the abbot without the assent of his convent alien the same lands to another and die, this is a discontinuance to his successor, &c.

Sect. 654.

BY the same reason they will say, that where a deane and chapter are fee’d of certaine lands to them and their successors, if the deane alien the same lands,

ceo ferroit un discontinuance a son successeur, s'istant que son successeur ne soit entrer, &c. A ceo poit estre respondue, que il y ait grand diversifie perenter in * deus ca-

sec. this shall be a discontinuance to his successor, so his successor cannot enter, &c. To this it may be answered, that there is a great diversitic between these two cases.

Sect. 655.

CAR quant un abbe et le covent sont feichers †, encore s'ile son
difficile, l'abbe ovra asse en son
nomme demene, sans nofiner le co-
vent, † &c. Et si aucun voile
fier pricipe quod reddat, &c.
de meines les terres quant ils fue-
rent en le maine l'abbe et covent,
it covent que tel action real soit
fus enuers l'abbe folement sans
nomme le covent ‖, par ceo que
tous fous morts persons en la ley,
forque l'abbe que est le l'overaigne,
&c. Et ceo est pere cause del
overaignie §; car autemen il
feroit forque com ‖ un de
les utres moignes de le covent,
&c.

FOR when an abbot and the
covent are seised, yet if they
bee disdised, the abbot shall have
an asse in his owne name, with-
out naming the covent, &c. And
if any will sue a pricipe quod re-
dat, &c. of the same lands when
they were in the hands of the
abbot and covent, it behoveth
that such action real be sued
against the abbot only without
naming the covent, because they
are all dead persouns in law, but the
abbot who is the l'overaigne, &c.
And this is by reason of the l'over-
aigny, for otherwise he should
bee but as one of the other monks
of the covent, &c.

Sect. 656.

MES un dean et le chapitre ne
fous morts persons en la ley,
&c. car chefeun de eux poit aver
action per joy en divers cafes. Et
de tiels terres ou tenements que
le dean et chapiter ont en com-
mon, &c. s'ils joient difficiles,
le dean et chapiter avoiront un
assee, et nemy le deane fele,
&c. Et si autem voile aver
action real de tiels terres ou te-
nements enuers le deane, &c. il
covent de furer enuers le deane et
chapiter, et nemy enuers le
deane sole, &c. et istit il ap-

BUT deane and chapter are not
dead persouns in law, &c. for
every of them may have an action
by himself in divers cafes. And
of such lands or tenements as the
deane and chapter have in com-
mon, &c. if they be disdised, the
deane and chapter shall have an
asse, and not the deane alone, &c.
And if another will have an action
real for such lands or tenements
against the deane, &c. he must sue
against the deane and chapter,
and not against the deane alone,
&c. and so there appeareth a

* diser added L. and M. and Rob.
† &c. added L. and M. and Rob.
‡ &c. not in L. and M. and Rob.
§ &c. added L. and M. and Rob.
‖ &c. not in L. and M. and Rob.
§ &c. not in L. and M. and Rob.

appiort grand diversite perenter great diversite betwene the two
teca, &c. &c.

These are apparent, and need no explanation. Saving in the 655. Section mention is
made of the precipice plus advis, which in this place is intended of a real action whereby
land is demanded, and is so called of the words in every such writ.

And the reason of this diversite betweene the caufe of the abbot and covent, and deane and
chapter is, for that (as hath beene said) the monks are regular, and civillly dead, and the
chapter are secular, and persons able and capable in law. But by the policye of law the ab-
bot himselfe (here termed the foreseigners) albeit he be a monke and regular, yet hath he ex-
pectity and abilitie to sue and be sued, to entitle, give, deme, and kiffe to others, and to
purchase and take from other; for otherwise they which right have should not have their
lawsuit remedied, nor the house remedied against any other that did them wrong; neither could
the house without such expectity and abilitie stand. And the covent, have no other abilitie
or expectity, but only to inflict to estates made to the abbot, and to estates made by him,
which for necessitie sake, though they be civillly dead, they may doe.

Sect. 657.

ITEM, si le maister d’u n hospital
discontinue certaine terre de son
hospital, son successeur ne peut en-
ter, mes a son briefe de in-
gréffe fine aifens confratrum et
* confororum, &c. Et teus tides
briefes pleinement apporcent en le
Registre, &c.

Also, if the master of an hos-
pital discontinue certain
land of his hospital, his successor
cannot enter, but is put to his
writ of de ingreffe fine aifens con-
fratrum et confororum, &c. And
all such writs fully appear in
the Register, &c.

This shall also be understood where the master of the hospital hath sole and distinct pos-
sessions, and not where he and his brethren are fealled as a body politicke aggregate of
many. And here Limitus (as divers times before) both cite the Register.

Sect. 658.

ITEM, si terre fait leffe a un
bome pur terme de sas vie, le
remainder a un autre en le taile,
servant le reverson al leffor, et
puis ceshy en le remainder dis-
seisit le tenant a terme de vie, et
fait un seffiment en un autre en
fee, et puis morit sans isse, et
le tenant a terme de vie morit;
il feindle en cest cas, que cezhy en le
reversion bien put enter sur le
seffice, pur ceo que ceshy en le
remainder que fitt le seffiment,
ne fuit unique seffie en le taile per
force de moyni le remainder, &c.

Also, if land be lott to a man
for terme of his life, the re-
mainder to another in taile, savy-
ing the reversion to the lesfor, and af-
left he in the remainder disseisit
the tenant for terme of life, and
maketh a seffiment to another in
fee, and after dyeth without issue,
and the tenant for life dyeth; it
is sefrony in this case, that hee in
the reversion may well enter upon
the seffice, because hee in the re-
mainder which made the seff-
ment, was never sefeild in taile by
force of the same remainder, &c.

H E R E

* conforness=foereats, L. and M. and Rel.
Chap. 12.

Of Remitter. Sec. 659.

Here our author having next before treated of discontinuance, very aptly beginseth this Chapter with a description of a Remitter.

Remitter of an antient termere en la ley, and is derived of the Latin verb remitteri, which hath two significations: either, to redire and re-far up againe, or to csate. Therefore a remitter is an operation in law upon the writing of an antient right remediable, and a latter estate in one person where there is no folie in him, whereby the antient right is redire and csate up againe, and the new defeble estate continued and sustained away. And the reason hereof is, for that the law pretends a foire and csate right, and therefore the first and more antient is the most foire and more worthy title; Quod primum est verum, Quod est primus est fortes, est quod est antium facit, &c. &c. therefore many bookes in kind of remitter say, that he is in his priuer estate, or in his maior decay, or in his minor estate, or in his title of.

Loci borne ad duo titulares. Here this word (Titelles) is taken in the largest sense, including rights for being properly taken, &c., in case of a condition, the like.


(1) 1. A to the general doctrine of remitter:—In note 1, p. 659, no notice was taken of the different degrees of title, which a person disfellowing another of his lands acquires in them in the eye of the law, independently of any antient right; that if A is disfellowed by B, while the possession is in B, it is a mere naked possession, and supported by any right, and thus A may sell, and B may purchase, and the title of B, sur a land on the land, without any previous action; but that if B, then the possession depends on his being at law of law. That, in this case, the title comes to the possession of the land by a lawful title, and appears in the eye of the law an appurtenant right of possession, which is as well good against the person disfellowing, that he has had right to retain the possession by entry, and can only recover it by an action at law. That the actions in these cases are called public actions; but that if A, permit the possession to be withheld from him beyond a certain period of time, without charging it, he suffers judgment in a public action to be given against him by default; or, if being7 main in mal, he makes it a discontinuance, in all those cases, B's title is strengthened, and A can no longer recover by a public action, and his only remedy being, at an action on the right. That these last actions are called private actions, and that they are the ultimate essence of the person disfellowed. Now, if in any of these three different classes of the antient title, the disfellow, without any delay in him, comes to the possession of the estate by a defeble title, he is considered to be in out of his new right, but no of his antient and better right, and is immediately, in the right of the person who supposing the disfellow to be in such a defeble estate, would be entitled to the lands, upon the censure of the estate, is gone for ever. In their circunstances, the disfellow is said to be re-sold to his antient estate. The principal reason for his being re-sold was, that the person in remoter extremity, if he was upon him, is in such cases where the possession is recoverable by entry, the remitter has the effect of an entity, and in those cases where it is recoverable by title, it has the effect of a judgment at law. But there is no remitter where he who comes to the defeable estate comes to it by his own self, or by a public action. Hence, the defeble estate, to make the party to be restored, must be sold to him during the time of confinement, or must cease to him by defect, or as of law, neither in any remitter where the utmost estate is recoverable, neither in itself, nor by entry, nor in those cases where the disfellow is beyond the three months mentioned in the beginning of the note, if he afterward comes to the estate by a defeble title, he is re-sold to it of that estate, and is not re-sold to his own antient title. Their art.
Of Remitter.

**Sect. 660.**

In this case, this is to him to whom the tenements descend, who hath right by force of the title a remitter to the title, because the law shall put and adjudge him to be in by force of the title, which is his elder title: for if he should bee in by force of the dissent, then the discontinuance might have a writ of entry; but if he shall be in by force of the dissent, the title and interest of the discontinuance is quite taken away and defeated, &c. (1)

To illustrate his description put in an example of a remitter, where the law prefers the ancient title by right, before a new estate defeasible. And this remitter is wrought by an estate upon the issue, by right of title, which is an act in law, and the defect of the land in possession, and the right of ejectment stand together.

**Sect. 665.**

Thus, if a tenant in title, having a new estate upon it, was ousted by a new estate, and the new estate was pleaded in the court. This is the case of a remitter, but there is no ejectment in it.

(1) See Sect. 663, note a.

The doctrine of the common law applying remitter, but they are greatly altered by the statute of the 17 Hen. VIII. That statute excludes the execution to the party in the same right, manner and form, as the title was limited to him. It operates only with respect to the title, and therefore the issue of the title is retained. By the statute of 31 Hen. VIII. it is enacted, that no fine, footman, or other right be the landlord of, the tenant of the tenant, shall be in a new estate, but that the title and interest, and all others whatsoever by the title, shall be in the tenant, and they shall be in the same manner as the tenant, and the estate shall remain in the tenant. And in all cases, such as are mentioned in the statute, such tenant shall have the benefit of the statute, and in all cases, such as are mentioned in the statute, such tenant shall have the benefit of the statute.

It is immaterial whether they come by ejectment or by all of law. See the remarks towards the end of the section, ibid.
Cap. 12.

Of Remitter.

where the issue in tail is claimed by purchase in the life of tenant in tail, and the ancestor right inherent in the same issue.

Car comint que tiel heir fuit de plene age al temps del mort, &c.
The reason is, because no issue can be adjudged in the infant at the time of the acceptance of the feoffment. Therefore the law ratifies the time of the feoffment, and not the time of the death: and albeit he might have waived the estate which he had by the feoffment at his full age, yet here it appears, that the right of the estate tail adhering to him either within age, or of full age, shall work a remitter in him; for that the waiver of the estate should have been to his loss and prejudice.

Since Lutina wrote, and after the statute of 27 H. 8. cap. 10. if tenant in tail makes a feoffment in fee to the issue of his issue being within age, and his heirs, and heirs, and issue, and the right of the estate tail adhering to the issue being within age; yet he is not remitted, because the statute executeth the sedition in such plato, manner and formes, as the issue was limited: Et ille de feoffito, so as there is a great change of remitters since Lutina wrote.(1)

But if the tenant in tail in that case waive the position, and bring a formation in the ddecessors; and recover against the feoffor, he shall thereby be remitted to the estate tail; otherwise the lands may be to as the issue in tail, should be at a great inconvenience: but if no formula be brought, if that issue died, his issue shall be remitted; because a statute in fact simple at the common law dependent unto him.

Estant de plene age, il charge per son fait, or his issue inheritable by force of the tail, which issue or issue at the time of the feoffement is within age, and after the tenant in tail is dead, and he to whom the feoffment was made is his heir by force of the tail, this is a remitter to the heir in tail to whom the feoffment was made. For albeit that during the life of the tenant in tyle who made the feoffment, such heir shall be adjudged in by force of the feoffment, yet after the death of the tenant in tail, the heir shall be adjudged in by force of the tail, and not by force of the feoffment. For altho’ such heir were of full age at the time of thedeath of the tenant in tail whomade the feoffment, this makes no matter, if the heir were within age at the time of the feoffment made unto him. And if such heir beeing within age at the time of such feoffment, committh to full age, living the tenant in tyle that made the feoffment, and so beeing of full age he charges by his deed

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Of Remitter.

un common de pasture, ou ove un rent charge, et puis le tenant en le taile morve; ore il semble que le terre est diischarge del common, et de le rent, pur cee que le heire est ens de autor etate en le terre que il fuit al temps de le charge fait, entant que il est en fon remitter per force de le taile, et offr le estate que il avoit al temps de le charge, est easurment desfaits. * &c.

The reason is, because (4) Roll Abr. 510. 411. the grantor had not any right (5) Rep. 3. b. Hak. 440. of the estate in taile in him at the time of the grant, but only the estate in fee simple gained by the feoffment, which (as Linneus here faith) is wholly defeated. And the estate of the land out of which the rent is deduced, being defeated, the rent is defeated also.

But if tenant in taile make a lease for life whereby he gains a new reversion in fee, so long as tenant for life does, whereby the grantor becomes tenant in tale again, and the reversion in fee defeated; yet because the grantor had a right of the entail in him, clothed with a defeasible fee simple, the rent-charge remains good against him, but not against his issue; which diversifie is

worthly of observation, for it opens the reason of many cases.

If the heire apparent of the defeat of the defeite, and grant a rent-charge, and then (6) Roll Abr. 412. the defeite diet, the grantor shall hold it is discharged; for these a new writ of enrire doth defend unto him, and therefore he is remitted.

So if the father diischarge the grandfather, and granteth a rent-charge, and die, now is the entry of the grandfather taken away, if after the grandfather diet, the fonde is remitted, and he shall avoid the charge. So as where our author puteth his example of a fee taile, it holds also in case of a fee simple.

Un commone de pasture, ou un rent charge, &c. Here Linneus putth his case of things granted out of the land. But what if the issue at full age by deed indented or deed poll make a lease for years of the land, and after by the death of tenant in issue he is remitted, whether shall he avoid the lease or no? And if it be allowed he shall not, because is made of the land it self, and the land is become by the lease in another plight than in is the case of a grant of a rent-charge, which I gather out of our author's owne words in another place.

Latter est diischarge del rent, &c. Linneus doth add the words materially, because the whole grant is not thereby avoided, but the land discharged of the rent-charge; so for the grantor shall have notwithstanding a writ of annullate, and charge the person of the grantor.

Lib. 3.

ITEM, un principall cause pur que tios hearie en les etats avancies et auters etats semblables, forra dit en fon remitter, est pur ce que il n'y ad aucun person evers que il post fuir fon briefe de

Also, a principall cause why such heire in the cases foresaid, and other like cases, shall be eased in his remitter, is for that there is not any person against whom he may sue his writ of formation. For against

UN principall cause pur que, &c. And of this opinion is (7) Linneus [47] 13. E. 4. 42. in our books.

Il n'ad aucun person evers que, &c. fiomme il avoit loialment recouver moitnie le terre vers un auter, &c. Here it is (5) Rep. 5. b. &c. 3. 9. 42. understood, that regularly a man shall not be remedied too.

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

{1} H. Here the ancient right comes after the defeasible estate.

Right remitted, for which it can have no action; for Edi-
tion here faith, that there is no pedon against whom the
issue when he commeth to the
land without folly may bring his action; and faith alike, that
this is the principal cause of
the remitter; for neither an
action without a right, nor a
right without an action, can
make a remitter. As if te-
nant in tale suffer a common
recovery in which there is er-
ror, and after tenant in tale
dismiss the recoveror and
deth, here the issue in tale
hath an action, viz. a writ of
error; but as long as the re-
coveror remaineth in force, he
hath no right, and therefore in that case there is no remitter. (1)

If B purchase an adowment, and suffereth an usurpation and fixeth moneth to pass, and after
the usurper granteth the adowment to B, and his heires, B, dieth, his heire is not remitted, be-
cause his right to the adowment was remitted, viz. a right without an action. (2)

Tenant in title of a mannor whereby an adowment is appendant maketh a discontinuance, the
discontinuate granteth the adowment to tenant in title and his heires, tenant in tale title, the
issue is not remitted to the adowment, because the issue had no action to recover the ad-
owment before he recovered the mannor whereby the adowment was appendant. And so
It is of all other inheritances regarded, appendant, or appurtenant; a man shall never be
remitted to any of them before he reconveneth the mannor, whereunto they are re-
gardant, appendant, or belonging.

Car vel ne post claims droit en les appartenences ne en les accesories qu'il ne droit en ad
le principale.

ITEM, fi terre soit taille a un
home et a sa femme, et a ses
heires de leur deux corps engen-
dres, les queux ont issue file, et
le femme devy, et le baron print
auter fonde, et ad issue un auter
file, et discontinua le tale, et puis
disse que le discontinuare et issif
muraiat felse, ore le terre dispen-

(1) IIII. By what is Edward Coke says here, and in other parts of this Chapter, it appears, that there is no remitter to a bare title, to an immediate right, or to a bare right of action, nor in their reps where the forfeiture does not occur to the right. It is upon the last ground, that where tenant in title makes a discontinuance, the issue in title is not remitted, nor there is there remitter a term for years. Hence, if heire for years to commence at a future day after that day which is a discontinuance, and continues in post-
cessors till the term commenceth, he shall not be remitted by the discontinuance an error of feudal; which, though it be tortious, the law will not divide from him for a term which is of no account. See 2. Roll. Atr. 410. f. 23. Com. Dig. vol. 5. a 47.

(2) This seems to be altered by the above-mentioned法人 of 7. Ann. c. 18. Note to the 16th edition.
of Remitter.  Sect. 663.

so die feild, now the land shall descend to the two daughters. And in this case as to the eldest daughter, who is inheritable by force of the tyle, this is no remitter but of the moitie. And as to the other moitie, she is put to use her action of formesdon against her felter. For in this case the two fitters are not tenants in parcenary, but they are tenants in common, for that they are in by divers titles. For the one fitter is in in her remitter by force of the entale, as to that which to her belongeth; and the other fitter is in as to that to her belongeth in fee simple by the descents of her father, &c.

CEO n'est remitter forisque per le moitie, &c. Here Liidston purceth a cafe where the issue in tyle shall be remitted to a moitie, because a moitie of the land descends unto her, and there cannot be any remitter, but for so much as is common to the issue by descent, or by any other means without his folly; and in this case by act in law the coparcenary is defeated, for the daughters are in by several titles, viz. the eldest daughter is tenant in tyle per formesdon, by the remitter of the one moitie; and the youngest feided in fee simple by descent of the other moitie, against whom the other fitter in tyle may have her formesdon. (1)

Sect. 663.

EN mesme le manner it is, if tenant in tyle encoffe his heire apparent in tyle (the heire being within age) and another jointenant in fee, and the tenant in tyle deth; now the heire entalye is in his remitter as to the one moitie, and as to the other moitie hee is put to his write of formesdon, &c.

LE heire, &c. est en (in Roll. Abr. 41.) in the same manner it is, if tenant in tyle encoffe his heire apparent in tyle (the heire being within age) and another jointenant in fee, and the tenant in tyle deth; now the heire entalye is in his remitter as to the one moitie, and as to the other moitie hee is put to his write of formesdon, &c.

 Vide Sect. 662.

required to the whole, but to the half: for first he etheth the fee simple, and after the remitter is wonted by operation of law, and therefore can remit him but to a moitie. But of this sufficient hath been seen in the Chapter of Joystennates.

Sect.

* Et not in L. and M. nor Robs.  † n'effeje. L. and M. and Robs.  ‡ &c. not in L. and M. nor Robs.  &c. not

(1) IV. By this and the following Section it appears, that if part of the estate comes to the right, it is remitted for that part.

Sect. 664.

ITEM, if tenant en tail enfeoff a son heir apparent, his heir being of full age at the time of the feoffment, and after tenant in tail dieth; this is no remitter to the heir, because it was his folly, that being of full age he would take such feoffment, &c. But such folly cannot be adjudged in the heir being within age at the time of the feoffment, &c.

Also, if tenant in tail enfeoff his heir apparent, the heir being of full age at the time of the feoffment, and after tenant in tail dieth; this is no remitter to the heir, because it was his folly, that being of full age he would take such feoffment, &c. But such folly cannot be adjudged in the heir being within age at the time of the feoffment, &c.

(An. 211. b. 187. n. 248. 237. b. 308. b. 40. E. 2. 44. 18. E. 4. 46.)

Hereditatem pitteth a cafe where the husband within age by the intermarriage may be remitted, albeit he gaineth but a freehold during the coverture en water droit.

Also here is to be observed, that the estate which doth in this case work the remitter, could not have continuance after the decease of the wife. And so on the other side, if the husband make a divestiture, and take back an estate to him and his wife during the life of the husband, this is a remitter to the wife profily; albeit the estate is not by the limitation to have continuance after the decease of the husband; which estate is proved by the reason of the case where our author here pitteth. And here our author observeth the diversity when the husband is within age, and when he is of full age; for when he is within age, no folly can be adjudged in him, as in this Chapter hath been often said.

Sect. 665.

ITEM, if tenant en tail enfeoff a femme en fee, et morit, et son issue deins age deprent moyne la femme, &c. An en un remitter ailenent deins age, et la femme donque d'ad rien, pur ce que le baron et la femme sont forique comme un person en ley. Et en cef cas le baron ne poit faire breike de formedon, non que il voilatz faire enuers la moyne, le quel ferroit encounvenient; et pur ce la cause la ley ad-judicera l'heire en fon remitter, pur ce que nul folly poit estre ad-judic en ley ad-jecunt

Also, if tenant in tail enfeoff a woman in fee, and dieth, and his issue within age taketh the same woman to wife; this is a remitter to the infant within age, and the wife then hath nothing, for that the husband and his wife are but as one person in law. And in this case the husband cannot sue a writ of formedon, unless he will sue against himself, should he be inconvenient; and for this cause the law adjudgeth the heir in his remitter, for that no folly can be adjudged in him being deins

(An. 208. b.)
Within age at the time of the ehepoules, &c. If the heir be in remitter by force of the entalle, it followeth, to resign, that the wife hath nothing, &c. For if such marriage be as one person, the land cannot be parted by moties; and for this cause the husband is in remitter of the whole. But otherwise it is if such heir were of full age at the time of the ehepoules, for then the heir hath nothing but in right of his wife, &c.

Profits during the coverture, and the freehold remaineth in the wife. Secondly, if the wife be poissled of a term for her life, yet he is poissled to dispence thereof by grant or dominie; and if he be outlawed or attainted, they are gifts in land.

Upon an execution against the husband for his debts, the husband may be poissled of the tenement, but he cannot make a dispossession thereof by his own plea. Also, if he make no disposition or forfeiture of it in his life, yet it is a gift in law unto him if he do not survive his wife; yet he hath power to dispence thereof by grant or dominie; and if he be outlawed or attainted, they are gifts in land.

In the same manner the husband shall not have the gift of it, but the wife shall have the gift.

But chattels real, and if the wife be poissled of chattels real or for hire, as executrix or administratrix, or as gardiners in car 이번, &c., and the intermediate, the law maketh no gift of them to the husband, although he surviveth her. In the same manner if a woman grant a tenement to her own wife, the husband, and doth, the husband surviveth not the tenement, but the executor or administrators of the wife shall have it; for it is if the wife hath but a poissle.

In the same manner it is if the wife be poissled of chattels real or for hire, as executrix or administratrix, or as gardiners in car 이번, &c., and the intermediate, the law maketh no gift of them to the husband, although he surviveth her. In the same manner if a woman grant a tenement to her own wife, the husband, and doth, the husband surviveth not the tenement, but the executor or administrators of the wife shall have it; for it is if the wife hath but a poissle.

But chattels real being of a mixt nature, viz. partly in poissle, and partly in action, when deceased the tenant, the husband shall have by the intermediaries, if the husband surviveth, the wife, but if the husband do not survive her, the husband shall have the arrears; and if the wife surviveth the husband, they shall have them, and not the executors of the husband. It is so of an advowson, if the church become void during the coverture (2), he may have a quota lying in his own name, as tenant hold; but the wife shall have it if she surviveth him, and the husband, if she surviveth him in charitate.

But

Sec. 665.

Here is also to be noted, that prettily by the marriage within age, the husband is remitted from the freehold and inheritance of the wife boundless cleave away.

Profe ne me la feme a fome. Here it is good to be shew some things which are given to the husband by marriage.

1. First, if it appear here by Estamin, that if a man poissle of a tenement be fessed in fee (f), he gaineth by the intermediaries an effait of freedom of his right: yet the effait is sufficient to work a remitter, and yet the efait which the husband gaineth dependeth upon uncertainty, and consilis in privite (j).

2. If the wife be attainted of felony, the lord by eich shall enter, and put out the husband: otherwise it is if he be in remitter at issue, and alike hallo. Also, if the husband be attainted of felony, the king gaineth nothing in the matter, but a pernance of the

Vide sec. 58.


[7] Annas and Leudington in herre


[23] Vid. sec. 58.


[27] Vid. sec. 58.

[29] Vid. sec. 58.

[31] Vid. sec. 58.

[33] Vid. sec. 58.

[35] Vid. sec. 58.

[37] Vid. sec. 58.


[41] Vid. sec. 58.

[43] Vid. sec. 58.

[45] Vid. sec. 58.

[47] Vid. sec. 58.

[49] Vid. sec. 58.

[51] Vid. sec. 58.

[53] Vid. sec. 58.

[55] Vid. sec. 58.

[57] Vid. sec. 58.

[59] Vid. sec. 58.

[61] Vid. sec. 58.

[63] Vid. sec. 58.

[65] Vid. sec. 58.

[67] Vid. sec. 58.

[69] Vid. sec. 58.

[71] Vid. sec. 58.

[73] Vid. sec. 58.

[75] Vid. sec. 58.

[77] Vid. sec. 58.

[79] Vid. sec. 58.

[81] Vid. sec. 58.

[83] Vid. sec. 58.

[85] Vid. sec. 58.

[87] Vid. sec. 58.

[89] Vid. sec. 58.

[91] Vid. sec. 58.

[93] Vid. sec. 58.

[95] Vid. sec. 58.

[97] Vid. sec. 58.

[99] Vid. sec. 58.

[101] Vid. sec. 58.

[103] Vid. sec. 58.

[105] Vid. sec. 58.

[107] Vid. sec. 58.

[109] Vid. sec. 58.

[111] Vid. sec. 58.

[113] Vid. sec. 58.

[115] Vid. sec. 58.

[117] Vid. sec. 58.

[119] Vid. sec. 58.

[121] Vid. sec. 58.

[123] Vid. sec. 58.

[125] Vid. sec. 58.

[127] Vid. sec. 58.

[129] Vid. sec. 58.

[131] Vid. sec. 58.

[133] Vid. sec. 58.

[135] Vid. sec. 58.

[137] Vid. sec. 58.

[139] Vid. sec. 58.

[141] Vid. sec. 58.

[143] Vid. sec. 58.

[145] Vid. sec. 58.

[147] Vid. sec. 58.

[149] Vid. sec. 58.

[151] Vid. sec. 58.

[153] Vid. sec. 58.

[155] Vid. sec. 58.

[157] Vid. sec. 58.

[159] Vid. sec. 58.

[161] Vid. sec. 58.

[163] Vid. sec. 58.

[165] Vid. sec. 58.

[167] Vid. sec. 58.

[169] Vid. sec. 58.

[171] Vid. sec. 58.

[173] Vid. sec. 58.

[175] Vid. sec. 58.

[177] Vid. sec. 58.

[179] Vid. sec. 58.

[181] Vid. sec. 58.

[183] Vid. sec. 58.

[185] Vid. sec. 58.

[187] Vid. sec. 58.
But if the parties had been deceased, or the church had fallen into a state of disuse before the marriage, there were many exceptions in action before the marriage; and therefore the husband should not be able to sue them by the common law, although he survived her. And also it is of refutes, mutatis
[But now by the statute of 12 H. 6. c. 37. if the husband survive the wife, he has the same rights as if the marriage were of recent date.]

But the marriage is an absolute gift of all chattels personal in possession in its own right, whether the husband survive the wife or not; but if they be in action, as debts by obligation, contracts, or otherwise, the husband shall not have the same right.

And of personal goods en auctoriter, as executrix or administratrix, &c. the marriage is no gift of them to the husband, although he survive his wife. 

But as to personal goods, there is a diversity of worthy of observation between a property in personal goods (as in a收藏者) and a base possession: if for property, then the husband had a title to a feme, or if she finds goods, or if goods come to her hands as executrix to a bullae, and take a husband, this base possession is given to the husband, but the action of detinue must be brought against the husband and wife, and not to be heard in this.

And now let us hear Lysias.

Le qual ferra inconvenient.

This argument is inconveniency, our author lauds it in many places.

ALSO, if a woman seised of certain land in fee takeeth husband, who alieneth the same land to another in fee, the alieneth the same land to the husband and wife for term of their two lives, saving the reversion to the lessor and to his heirs; in this case the wife is in her remitter, and she is seised in deed in her demesne as of fee, as she was before, because the taking back of the estate shall be adjudged in favour of the fact and the wife, not the fact of the wife; but so fully can be adjudged in the wife, which is covert in such case. And in this case the lessor hath nothing in the revervation, for the wife is seised in fee, &c.

L A feme est en in remitter. By this it appears, that although there be no notice between husband and wife, yet this is a remitter present, and duces not upon the survivor of the wife, as some have thought: for if the estate given by intramariage be a determinable estate in a reversioner, an estate made to the husband and wife, it works a remitter in the wife. And so if it be tenant in tail made, by the wife being within age, and his wife in fee, and there is a remitter to the life interest, by the death of tenant in tail; though some have thought the contrary.

Here

* st added L. and M. and Rah.  † often added L. and M. and Rah.  ‡ st, not in L. and M. nor Rah.

But they shall go to the administratrix de bonis non; for should they go to the husband, the creditor, legatees, &c. of the deceased would be thereby wronged. New to 11th edition.

Squibb v. Wynn, 3 P. W. 578. Cert v. Reeves, ib. 364—5. If the wife survive the husband—as to this point, there is a material difference with regard to chattels real, and goods, cattle, money, and other chattels personal. All chattels personal become the property of the husband immediately upon the marriage; he may dispose of them without the consent of concurrence of his wife; but in his dower, whether he die in her lifetime or in his own lifetime, they belong to his own, and he cannot survive her, excepted in his chaste, &c. as leases for years, there is a distinction between these while it is in the nature of a present vested interest in the wife, and which in which she has not only a possessive or contingent interest. To explain this fully, it ought to be remarked, that it was but a small time that a disqualification of a term of years on man for his life was such a total disqualification of the term, that no disposition could be made of the personal residue of the term, or at least, that if it was made, the first devisee might dispossess the whole term, notwithstanding the devisee of the residue. This is reported by Drye 74. to have been determined by all the judges in the 1st of July. L—VII. This case of chanecy in the king brokes through this rule, and supported such future dispositions when made by way of trust. Their example was followed by the court in the case of Man. Manning v. H. E. R. 59. and Lamport v. E. R. 15. Rep. 46. h. This disqualification of the reversion at a term, after a previous discharge or disposition of the term to a person for his life, or to a person in possession by the necessity of the devisee, and the devisee of the devisee is called a possibility. This possible interest in a term of years differs from a contingent interest, created by way of remainder. —If a person lives a real estate to A, for life for life after his death, the devisee of the devisee of A is not in equity a possessor, but he is a remainder, and therefore he has no right of possession.
Here also it appears, that no folly in this case can be adjudged in a same covert, for the taking back of the elate shall be adjudged in law the act of the husband.

But in this case if the lessee will sue an action of want against the husband and his wife, for that the husband hath committed waft, the husband cannot barre the lessee by shewing this, that the taking back of the elate to him and to his wife was a remit to his wife, because the husband is flopped to say that which is against his own eoffement, and to take back the elate for term of life to him and to his wife. And yet the lessee hath no revolt, for that the fee simple is in the wife. And so a man may sue one thing in this case, that a man shall bee flopped by a matter in fact, though there be no writing by deed indented, or other-wise.

To make the reader more capable of the learning of ellipses, their few rules, among other, are to be known.

Thus the reason why ellipses are allowed, seem to be these: No man ought to allege any thing but the truth for his defense, and what he has alleged once, is to be peremptory, and therefore he ought not to contradict it; for in this deed the allusion contrivis non est ab inditio. Secondly, as the law cannot be known till the facts are ascertained, to neither can the truth of them be found out but by evidence, and therefore it is reasonable that some evidence should be allowed to be of so high and consider-
eument of a benefice, and others that come under by in law, or in the poe, shall be bound and take advantage of ellopea; and that a rebater is a kind of ellopea.

2. Secondly, every ellopea ought to be a precise affirmation of that which makes the ellopea, and not be spoken of a mere man; for the truth, must be certain to every intent, and not to be taken by argument or inference.

3. Thirdly, every ellopea ought to be a precise affirmation of that which makes the ellopea, and not be spoken of a mere man; for the truth, must be certain to every intent, and not to be taken by argument or inference.


5. Fourthly, a matter alleged that is neither traversable nor material, shall not ellope.

6. Fifthly, regularly a man shall not be concluded by acceptance or the like, before the title secured.

7. Sixthly, matters alleged by way of suppofill in counts, shall not conclude unless: otherwise it is after judgement given; and after non-suit, unless the suppofill in the counts shall not conclude, yet the same, the same, or other pleading of either party, which is precisely alleged, shall conclude after non-suit: and hereby are the books reconciled.

8. Eightly, where the verity is apparent in the same record, there the adverce party shall not be ellope to take advantage of the truth; for he cannot be ellope to allage the truth, when the truth appeareth of record.

9. If a fine be levied without any original, it is voidable, but not void; but if an original be brought, and a remit ent entred, and after that a concord is made, or a fine levied, this is void, in respect the verity appeareth of record.

10. An improprition is made after the death of an incumbent, to a bishop and his successor; the bishop by indulture demiteth the patronage for to tory yeares, to begin after the death of the incumbent; and the same and chapter confirme it, the incumbent dieth, and at first there shall not conclude, for that it appeareth that he had nothing in the improprition till after the death of the incumbent.

11. Nighly, where the record of the ellopea doth run to the falsitie or legitimation of the person, all strangers shall take benefit of that record: as outlaws, excommunicate, profition, profition, attainer of baronetc, of felonie, & the like; material, and shall conclude.

12. A fine or penalty, &c. is void.

13. An eloquence or regulation, or other pleadings of either party, which is precisely alleged, shall conclude after non-suit: and hereby are the books reconciled.

14. But of a record concerning the name of the person, quality, or addition, no elogiance shall take advantage, because he shall not be bound by it.

15. But note, reader, that in case of the material point fixed, an eloquence shall take benefit of it, &c. But yet because he may be misled by the ecclesiastical law, or by the book, and therefore the adverce party may allege the specifie matter, and conclude the benefit of the bishop, according to the ecclesiastical law, and alllege further the specifie matter according to the common law, whereof, the adverce party must shew by the books that treat of this matter to be reconciled. (1) But ass now let us return to Utriusque.

But if in the action of wait the husband act, the grand defeare, and the wife pray to be receive, and is received, she may well shew the whole matter, and how she is in her remitter, and thence shall barre the leffer of his action, &c.
OF Remitter.  

Sect. 669.  

**C A R en chefun cau lau femie us receive power per defalat fon baron, el pledder et ov era moyne l'advantage en ple ple- 

dant, come el juifot femie fol, &c.**  

Et commen que l'ainene jif il leas al baron et a la femie per fais en- 

dant, uncero ce ef remitter a la femie.  

Et aussi, comen que l'ainene rendis moyne la terre al baron et a la femie per fin pur per 

tem de leur vie, uncero ce ef un remitter a la femie, per que ce femmer efert que prnent eflaat per 

fine, ne ferra noy ex- 

amine per les justicess, &c.

**FOE in every case 

where the wife is 

received for defalat of 

her husband, the shall 

plead and have the fame 

advantage in pleading, as 

fhee were a woman 

folar, &c. And albeit 

that the alene made 

the leafe to the hus-

band and wife by deed 

indented, yet this is a 

remitter to the wife. 

And also, albeit the 

alene rendereth the 

fame land to the hus-

band and his wife by 

fine for term of their 

lives, yet this is a 

remitter to the wife, 

becauze a femmer covert which takes an eflaat by 

fine, shall not be 

examined by the 

justicess, &c.**  

- Ait, ait, or releafe her right by a fine of the lands or tenements.  

Fourthly, if the husband leive a fime of his wife's lands, and the conuife grant and 
render the land to the husband and wife, although the wife be not parte to the original, not 

to theconsideration, and therefore the ought not by the law to take any profet eflaat but by way 

of remainder only; yet here it is proved by Lisleston, that the grant and render de fale to the 

wife in professt is not void; for then it could not work a remitter, but voidable by writ of 

error; and that avoidable elestt works a remitter. (1)

**Ne ferra noy ex- 

amine per les justicess, &c.**  

The examination of a femme covert ought to be secret; and the effect is to examine her, whether she be content to leive a 

fine of such lands (namning them particularly and difficulty, and the thre that paffith by the 

fine) of her owne voluntary free will, and not by threats, menaces, or any other compulsorie 

forces.

Sect. 670.  

**ET hic nota, que quant aften 

chae pafierde de la femme que 

ef covert de baron per forse 

and here note, that when any 

thing shall paffe from the wife 

which is covert of a husband by 

fin.**

* * *  

(1) V. From this polemique, and others mentioned both by Lisleston and Coke, it appears to be a general rule, that the remitter hold take effect, though the estate which made the remitter is voidable; as if it be taken from an infant, a femne covert, or upon condition. See Cons. Dig. vol. 4. 415.
Cap. 12.

Of Remitter.

Sect. 671.

force of a fine: as if the husband and wife make curtesy of right to another, &c. or make a grant and render to another, or release by fine unto another, et sic de finibus, where the right of the wife shall pass from the wife by force of the same fine; in all such cases the wife shall be examined before that the fine be taken, because that such fines shall conclude such femes covert in all cases; and if a wife in such case be not at all examined, &c.

QUANT. De finibus pasiera de la femm covert, &c. per force d'un fine, &c. And of this opinion is [d] in Linneas in our books.

* Therefore if the husband and wife be tenants in special title, and they levy a fine at the common law; and after the husband and wife take back an estate to them and their heirs, in this case the estate title is not barred; and yet against a fine levied by her feme she cannot be remitted, because thereupon she was examined; but in that case if the land defend to her wife, she shall be remitted.

Sect. 671.

ITEM, si tenent in taile discontinue le taille, et ad e jussi file, et morris, et la file esceant de pleine age prent baron, et le discontinue faict un releve de cele al baron et a la feme per terme de leur vies, ceci est un remitter al feme, et la feme est ejus per force de la taille, causi qui supra.

ALSO, if tenant in taile discontinue the taille, and hath issue a daughter, and dieth, and the daughter being of full age takest his husband, and the discontinue make a releve of this to the husband and wife for term of their lives, this is a remitter to the wife, and the wife is in by force of the taille, causa qui supra, &c.

Hic etiam apareat, that her full age when the take took marriage is not materially but her appearat at the taking back of the estate. And so note a diversitie between a remitter and a defendant: for if a woman be defendant, and being of full age takest his husband, and then the defendant dieth failed, this discontinue shall bind the wife, albeit the wife was covert when the defendant was called, because the same of full age when the take took his husband, as appeareth before in the Chapter of Difcrites. But alldike the wife that hath an ancient right, and being of full age, takest his husband, and the discontinue letteth the land to the husband and wife for their lives, this is a remitter to the wife; for remitters to ancient rights are favored in law.

(Ann 669)

* Er. nec in L. et M. nec Rob.

† 671. nec in L. et M. nec Rob.

‡ Er. nec in L. et M. nec Rob.

(1) Since Linneas wrote, several statutes have been passed, which have given rise to a great exception of the doctrine referring alienation by husbands of their wives estates. These are chiefly the statutes of the 4, H. 3, respecting the force and effect of such the 25, H. 8, for transferring uis into possession, and the 31, H. 8, for performing the easement of vix against the alienation of their husbands. The reader will find the effect of these statutes upon the doctrine of remitter, investigated in a very copious and minute manner in Lord Chief Justice Hobart's reasons of his argument on giving judgment in the case of Bensweth v. WIngfield. See 4th Rep. page 154.
ITEM, si terre soit cedue a le baron et a sa feme, aver et tenir a eux et a le sie de leurs deux corps engenges, et paies le baron aliene la terre en fes, et reprend effate a ley et a sa feme pour terme de leur deux vies; en cef cas il est remitter en faist a le baron et a sa feme, maugre le baron. Car il ne peut estre un remitter en cef cas a la feme, finn que fust un remitter a le baron, par ceo que le baron et sa feme sont tout un mesme person en ley, conant que le baron est stoppe de chappier. * Et par ceo, cef cest un remitter en ley enconter son alienation et son reprisef demefue, comme eft dit adevant. 

ALSO, if land be given to the husband and to his wife, to have and to hold to them and to the heirs of their two bodies begotten, and after the husband alien the land in fee, and take back an estate to him and to his wife for term of their two lives; in this case this is a remitter in deed to the husband and to his wife, maugre the husband. For it cannot be a remitter in this case to the wife, unless it be a remitter to the husband, because the husband and wife are all one same person in law, though the husband be stopped to claim it. And therefore this is a remitter against his owne alienation and reprisel, as is said before.

HERE it appareth, that the husband against his owne alienation, if he had taken the estate to him alone, could not have beene remitted. But when the estate is made to the husband and wife, albeit they be but one person in law, and no moities betweene them; yet for that the wife cannot be remitted in this case, unless the husband be remitted also, and for that remitters, as hath beene aforesaid, are favored in law, because thereby the more auient and better rights are reduced againe; therefore in this case, in judgement of law, both husband and wife are remitted; which is worthy of great observation.

ALSO, if land be given to a woman in taile, the remainder to another in taile, the remainder to the third in taile, the remainder to the fourth in fee, and the woman taketh husband, and the husband discontinue the land in fee; by this discontinuance all the remainders are discontinued. For if the wife die without issue, they in the remainder shall not have any remedy but to use their writs of forsemedon in the remainder, when quant

* Et par ceo not in L. and M. nor R. 
† Or added L. and M. and Rods.
quant il avient a leur temps. Mes
fi après tiel discontinuance. effaite
faisit fait le baron et sa femme par
terre de leur deux vies, ou par
terre d’autre vie, ou autre effaite,
&c. par quoi que-ce oit un remit-
ter a femme, oit +suxy un remit-
ter a tous ceux en le remanier;
Car apres ce que la femme que ci
en son remitter mortuy fait siusse,
ces en le remanier poyst en-
ter, &c. sans auffe action juer,
&c. En moinde le maner oit de
ces que sont la reverson apres
tiel tailles.

\[LITTLETON\] having spoken of remitters to the issue in title, who is privy in blood,
and to the wife, who is privy in person, now he speaks of remitters to them in rever-
sion or remainder expectant, upon an issue tale, who are privy in estates. And this case proved
that the wife is remitter preferably; for the equity of the law requires, that as the discontin-
nuance of the estate in title is a discontinuance of the reverson or remainder, so that
the reverson to the estate in title, should be a remainder to them in the reverson or remainder.

41. E. 3. 17. 31. All. 1.
38. All. p. 4.

44. All. p. 15. 44. E. 3. 39.
(1) Roll. Ab. 441. 2 C. 145
W. Jones, 1592.
40. E. 3. All. 49.

Vid. Pl. Comm. 489. Nicholls’s
case, & fol. 359. in Walpole’s
case, 17. All. Diss. 344.
49. E. 3. 16.
4. fol. 16. b.

\[SECT. 674, 675.\]

\[FEINT et fausse action, \] Aiso faite et
falsa, but herof Littleton
parle echtes hintelfe in this
Chaprer,

\[Quod si disforced,\]
is a whrit that is given
by [1] Baron to any te-
nant for life or in tayle
upon a recovery by de-
fault against them in a pro-
ceeding, by ethe against the

it comes to their times. But if af-
fer such discontinuance, an effaite
be made to the husband and wife
for terms of their two lives, or for
terme of another man’s life, or
other effaite, &c. for that this is
remitter to the wife, this is also a
remitter toall them in the remain-
der. For after that the wife
which is in her remitter be dead
without issue, they in the remain-
der may enter, &c. without any
action living, &c. In the former
manner is it of those which have the
reversion after such entails.

ALSO, if a man leta
house to a woman
for termes of her life,
laying the reverson
to the lefiro, and after one
tul a feyned and false
action against the wo-
man, and recovereth
the house against her
by default, so as the

\[ITEM, fi home lei-

fai un meafe a un
feme pur termes de sa
vie, fauant le rever-
son al feffour, et puit
un faif un feint et
fius action evers la
de la

* [\textit{added L. and M. and Roh.}]
+ [\textit{any not in L. and M. and Roh.}]
† [\textit{\textit{added L. and M. and Roh.}}]

(1) VI. Thus it may be laid down as another general rule, 
that a remainder in the particular effaite, is a remainder to him in the re-
versions or remainders. See Com. Dig. vol. 3: 417.
woman may have, against him a quod ei deforcet, according to the statute of Welfin. 2.
now the reversion of the lessor is discontinued, so that he cannot have any action of waffe. But in this case if the woman take husband, and he which recovereth let the house to the husband and his wife for term of their two lives, the wife is in her remitter by force of the first lease.

AND if the husband and wife make waffe, the first lefesor shall have a writ of waffe against them, for that inasmuch as the wife is in her remitter, he is remitted to his reverention. But it feemeth in this case, if hee that recovereth by the fals action, shall bring another writ of waffe against the husband and his wife, the husband hath no other remedy against him, but to make default to the grand derriff, and cause the wife to be received, and to plead this matter over against the second lefesor, and monnosterment of the action for that he recovereth fai public and feint in ley, &c. if he finte the lefle po LXI barrer, &c.

Of Remitter.

Sect. 675.

AND if the husband and wife make waffe, the first lefesor shall have a writ of waffe against them, for that inasmuch as the wife is in her remitter, he is remitted to his reverention. But it feemeth in this case, if hee that recovereth by the fals action, will bring another writ of waffe against the husband and his wife, the husband hath no other remedy against him, but to make default to the grand derriff, &c and cause the wife to be received, and to plead this matter over against the second lefesor, and monnosterment of the action for that he recovereth fai public and feint in ley, &c. if he finte the lefle po LXI barrer, &c.
the place waited for but a penalty, to as the nature of the action (for they) remained skill to be personall, for that the damagess are the principall; [f] and in prooof hereafter they cite divers authorities in law. And if it bring an action of waste, the release of one is a good barre against the other, [f] so resolved by the whole court; which prooves (firstly) that the damagess are the principall, and (secondly) that the releas of one of these should not barre the other, no more than in an affidavit, a writ of ward, an ejection, &c.

Lastly, they say, that in actions where damagess are to be recovered, and the land is the principall, the demandant never counteract to damagess, and yet still recover them: but in an action of waste the plaintiff counteath to his damagess; and if the damagess be the principall, then clearly no good is effaced or releas.

Others do hold the contrary: and as to the first they say, that albeit that in the writ of waste, judgment is not only given upon the default, yet the default is the principall, and the cuse of awarding of the writ to the enquiree is an incident therunto: and the law always hath respect to the first and principall cause: and therefore upon such a recovery the writ of debt lieth; and that writ lieth not but where the recovery is by default. So in action of waste against the husband and wife, upon the default of the husband, the wife shall be heard, and yet the writ thereon shall be per defectum. So upon such a recovery in waste against the baron and feeme by default, the wife shall have a cause in void of the writ: and yet it is disrespect where the recovery is per defectum. And albeit the defendant may give in evidence, if he knoweth it; yet when he makes default, the law pretences he knoweth not of it, and it may be that in truth knoweth not of it: and therefore it is reason, that seeing the writ is such a beneficall writ, both give it him, that he be admitted to his good et defecit, in which writ the truth and right shall be tried. And fio is of a recoverys, by default in no affide; albeit the recognizers of the affide give a verdicte, a good et defecit lieth.

And all this as to this point was resolved by the whole court of common pleas; and as to the second as to the caus of void of the writ in 41. E. 3. 4. 6. where they say, and yet he in the recovery is received and pleas to issue, and it is found by veridict for the demandant, the default and the verdicte are causes of the judgement; and yet the tenant shall have a good et defecit.

As to the second objection, that the defendant may have an attainit. First it was utterly denied of the other part, [f] that an attainit did lie in this cause; for though it be taken by the oath of twelve men, yet it is but an enquest of office, whereupon no attainit did lie on either party, whereupon it was enquired on an upon either party, and therefore the writ is not a verdicte of quale jure. Secondly, admitting that an attainit did lie in that cause, yet it is not without ex conuenientia, that a good et defecit did not lie; [g] for if an affide be taken by default, a good et defecit doth lie; and yet the purtie may have an attainit; for this is no common office, but a recog. by the recognizers of an affide, who were returned the first day, and not returned upon the awarding of the affide by default. And as to the third objection, of this opinion was the whole court in learned Erasmo case, so not mentioned. As to the other, the third objection, that the damagess should bee the principall, because they were at the common law; that is an argument (say the other side) that they are more antient, but that they are more principall; and trebles damagess were not at the common law (for the common law never gives more damagess than the lotts amounteth unto). But they are given by the flature of Glocester; but the place waited is worthier in the reality than damagess that are enracta per officem. It is some magis utiam domini et adigna debo ut dicam domino. And it is concluded, that in an action of waste against tenant for life, or for yeares, the place waited is the principall, because the flature of Glocester doth give the place waited and treble damagess at one time; for no prohibition or action of waste lay against them at the common law; and in an action of waste, if the defendant confesse the action, the plaintiff may have judgement for the place waited, and releas the damagess which prooves (as in 56. Erasmo) that the damagess are not the principall; for a man shall never release the principall, and have judgement of the accessor; and an action of waste against tenant for life, is as real and as action against tenant in dower. And as to the case of 9. H. 3. cited on the other side, it is so confirmed, that it was an action in the court of Exeter, where the relents of the one doth but hath: neither could summons and leveure lie in that case; [h] but in an action of waste (in the court) either against tenant for life or for yeares, the relents of the one doth not lie in such a case: and the leveure doth lie: and this point was also resolved accordingly in Edward Earle's cause.

But when these three points were resolved by the court for the demandant, then the council of the tenant moved in arrear of judgement another point, viz. that the judgement was given upon a sub judiciis, which is always after appearance, and not per defectum; and therupon judgement was denyed. (1)

(1) Sir Edward Coke, in his conference on the statute of Gloucestef, 1. 11, 116, observes, that regularly in personal and mixed actions damages were to be recovered at the common law; but that in real actions no damages were to be recovered at the common law, because the court could not give the demandant that which he demanded not; and the demandant in real actions demands damages either by writ or by counsel. This affidavit was a breakd action; and therefore must not be held, because it is not made a sufficient action, because the affidavit, his feifiein, and his definef by the tenant, he had judgment to recover his feifiein and his damages for the injury sufficed. But the damages in clave cases were awarded against the defines only, and not against their tenants or tenures. The statute of Marlbridge, 51. H. III. c. 16, gave damges in a writ of mortuamenion against the chief lord. The statute of Gloucestef, 6. H. I. was a considerable extention of the law of damages. In ordre, that if the diffides should alien the lands, and should not have werehood of damages might be levied, the performance was wholly void, and the tenants came should be charged with the damages, to such extent and for the same time he holdeth them; that the diffides should recover damages on a writ for entry for diffides against him who was found tenant against the diffides; that damages should be recovered by writ of mortuamenion, as in one of misdifides; and so in all cases he was bound to recover against a man upon his own intrusion, or his own fil. The flature then mentions, that till that time damages had been taxed only to the value of the lotts of the tenant, but after that time provided, that it was taxed all the damages, and the receipts of them, that were raised, together with the damages, not only in the above instances, but generally in cases where he was entitled to recover damages. Thus this flature only mentions the coifs of the writ, the contribution of it was not extended to the whole extent of every case to the flature. Before this flature the lotts in the fliture of Gloucestef were given in a writ of mortuamenion, which the plaintiff charged against the estate, whereby the coifs of the writ were affeed, and the affeeding coifs affeeded an suffisant ffit to satisfy that estate, as well as the damages. The flature of Marlbridge gave coifs in particular taks to the defendant, which it is shewed that there was no writ of entry for diffides to be by this flature given. But the lane of law of Cofts, p. 158, 52. p. 158. 52.

The general law of cofts did fell out of the flature of Gloucestef: so that when coifs were not recoverable before that flature, they are not recoverable now, wuld. in that case, where they have been given by some subjacent flature.
Lib. 3.  

Of Remitter.  

Sec. 674, 675.  

To return unto Lixton. Here he openeth a force of law; for the cause of this remitter is, for the tenant for life in this case might have a good ei deferenet, for so Lixton faith: That que il petit over good ei deferenet. Now it appereath by our books, that the tenant for life in the common law was remediede, because he could not have (as hath beene said) a writ of right; and consequently the femo cover in this case could not be remitted by the taking of an estate to her husband and her, because her right was remediede, and could have no action. But when an act of parliament or a statute doth alter the reason and causeth thereof, thereby the common law it felte, as the act of parliament or custom be pardoned; for alteravit causaf et ratione legis, alteravit et lex, et eipsum causaf sub ratione legis effectist tu, sae in this case the statute of 23. giving remedy to this femo tenant for life, in this it giveth her ablity to be remitted, because her right is not now remediede, but she hath an action to recover it.

And Lixton wryly putteth his case, that the recovery was had against the femo while the was sole; for there was a time when it was a question, whether a recoverie being had by default against the husband and wife, (the writ being tenant for life) the full statute gave a good ei deferenet to the husband and wife, for that the statute gave it against tenant in dower and tenant for life, &c. and here the husband is not tenant for life, but feuste in the right of his wife, and therefore out of the statute: and of this opinion is one (2) bookes; but (Hiepore fuit non font fama, et parum differunt quod se concenentur) the contrary hath beene adjudged, and so that point is now in peace: and the like in case of recent for him in reversion. But if the husband and wife losse by default, and the husband die, the wife shall not have a good ei deferenet: for a cui in widawe is given to her in that case by a former statute, viz. 26. cap. 3. These things are worthy of due observation, and points of excellent learning: and Lixton in our books speakes of another kind of good ei deferenet at the common law. upon a difficult, which you may read. But now let us heare him in his books.

Le recovery of discontinue, que il ne petit over action de waife.

Here it appereth, that when the recovery is devoluted, the lefite cannot have an action of waife, because the writ is, that the lefite did waife ad absculmatioun of the lefite, and that inheritance must continu in the time of the action brought. And it is to be observed, that in an action of waife brought by the lefite against the lefite, the lefite in respect of the privitite cannot plead generally, nisi ex je reversion, viz. (6) that the lefite hath nothing in the reversion, but he must show how and by what means the reversion is devoluted out of him; and this holdeth (as hath been said) between the lefite and the lefite, but if the grantee of a reversion bring an action of waife, the lefite may plead generally, that he hath nothing in the reversion. And yet in some special cases an action of waife shall lie, after the common law at the time of the waife done. As if it were for life make a settlement in fee upon condition, and after the lefite re-enter for the condition broken: in this case the lefite shall have an action of waife. And fo of a bishop make a lease for life or yeares, and the bishop die, the lefite, the fee being void, doth waife, the successor shall have an action of waife. So if lefite for life be discontinue, and waife is done, the lefite re-enter, an action of waife shall be maintained against the lefite; and so in like cases: and yet in none of these cases the plaintiff in the action of waife had any thing in the reversion at the time of the waife made; but these especial cases have their severall and especial reasons, as the learned reader will easily find out.

Here note, that albeit the action be false and forged, yet is the recovery so much respected in law, as it worketh a discontinue. (7) But if tenant for life suffer a common recovery, or any other recovery by ouine and content between the tenant for life and the recoveror, this is a forfeiture of list after, and he in the reversion may parfaitly enter for the forfeiture. Since our author wrote, the statute of 14. EL cap. 8. hath beene made concerneth this matter, which is to be considered, (4) and hath beene well construe and expounded, and needs not here to be repeated. And it is to be observed, that although the discontinue groweth by matter of record, yet the remitter may be wrought by matter in patria: and of the residues of these two Sections sufficient hath beene said before.
Sect. 676.

ITEM, if the husband discontinue the land of his wife, and after taketh backe an estate to him and to his wife, and to a third person for term of their lives, or in fee, this is no remitter to the wife, but as to the moiety; and for the other moiety hee must after the death of his husband feci a writ of cui in vitæ.

CEIO n'est remitter forsque quans la moitié, &c. Albeit there is authority in our books to the contrary, yet the law is taken as Litiens here holdeth it, and as before it appeareth in the like case in this Chapter, and for the reason thereina exprested.

Sect. 677.

ÉT ainsi le baron revient, et agreea, &c. In this case the estate is in the feme covert present by the livérée before any agreement by the husband; and of this opinion is Litiens in our books.

Ala ouster le mere.
If hee had beene within the residence, it doth not alter the case.

Square om est cauf si le baron, &c. Here is a question moved by Litiens, whether the disfregement of the husband shall ouste the wife of her remitter. And it formeth that the disfregement shall not devest the remitter.

ITEM, if the husband discontinue the land of his wife, and after taketh backe an estate to him and to his wife, and to a third person for term of their lives, or in fee, this is no remitter to the wife, but as to the moiety; and for the other moiety hee must after the death of his husband feci a writ of cui in vitæ. Also, if the husband discontinue the land of his wife, and after taketh backe an estate to him and to his wife, and to a third person for term of their lives, or in fee, this is no remitter to the wife, but as to the moiety; and for the other moiety hee must after the death of his husband feci a writ of cui in vitæ.

Sect. 678.

HEP Tuis le diffeñor leffa meñce les tene-
ments, &c. Note, so much as remitteres favoured in law,
the distributee and the distributee's estate is lawful,
doth render the wife, and devesteth all out of the
continuance, and revêt the discontinue, albeit he hath a
wrongfull estate in the discontinue.

18. E. 4. 21. 6. (F. N. B. 46. c.)
Amet 156. 8. 498. 3. Lawm. 8.

Also, if the husband discontinue the lands of his wife,
and the discontinuee is diffused, and after the
deffection lezeth the same lands to the hus-
band and wife for term of life, this is a
remitter to the wife.

Et plus le diffélor leffa menne les tene-
ments, &c. Note, so much
as remitteres favored in law,
the distributee and the distributee's estate is lawful,
doth render the wife, and devesteth all out of the
continuance, albeit he hath a
warranty of the land.

Mes si le baron et
femme fuerez de co-
vine et consent, &c.
Here it ap-
pears that conviv and consent of the husband and wife doth bind the remitter of the wife;
for conviv and consent in many
cases to do a wrong, doth caus a man more right, and the ill manner doth make a good matter unlawful.

Conviv, Conviv, com-
mit of the French word
cade, and is a sincer affect
deter.

A woman is lawfully intitled to have dower, and she is of cowine and content that she shall discharge the tenant of the land; against whom she may recover her lawful dower, all which is done accordingly: the tenant may lawfully enter upon her, and avoid the recovery in respect of the cowine. But if a dictator, intruder, or abater, doe found a woman that hath lawfull title of dower, this is good, and shall bind him that right hath; if there were no such cowine or content before the dictation, abatement, or intrusion.

And so it is in all cases where a man hath a rightfull and just cause of action; yet if he of cowine and content doe raise up a tenant by wrong against whom he may recover, the cowine doth obfuscate the right, so as the recovery, though it be upon a good title, shall not bind or refore the demandant to his right.

If tenant in title and his litter dictate the discontinue to the wife of the fathers; and the father died, and the land descended to the issue he is not remitted against the discontinue in respect he was privie and partie to the wrong; but in respect of all other he is remitted, and shall deraigne the first warrantie. And so note a man may be remitted against one, and not against another.

A. and B. by tenants be intitled to a real action against the heir of the dictator, A. cause the heir to be disfitted, against whom A. and B. receive and sue execution. B. is remitted, for that he was not privie to the cowine, and shall hold in common with A.; but A. is not remitted, for the reason that Linetoun here sheweth.

Per ceo que et siff dictafore.  Nota, it is regularly true, that a feme coure cannot be a dictatire by her commandement or procurement precedent, nor by her assent or agreement subsequent; but by her actual entry, or proper act, she may be a dictatire. And therefore some doe hold that Linetoun must be intended, that the husband and wife were present when the discontinue was done; and others doe hold that Linetoun is good law, albeit the were absent; for that if her procurement or agreement be to doe a wrong, to cause a remitter unto her: in this speciall case, the shall faille of her end, and remitted the shall not be; but in this speciall case the shall be holden as a dictatire by her cowine and content easiness to hinder the remitter. And here it appeareth, that albeit the husband be of cowine and content, etc.; yet if the wife were not of cowine and content also, the shall be remitted, because, as Linetoun saith, there was no default in the wife.

Sec. 679.

ITEM, si tief discontinue fe-
foit estafe de fraunktement
al baron et a son feme per fiet en-
dent fur condition, felicite, refer-
vant al discontinue un certaine
rent, et fur default de payment un
re-entry, et par ceo que le rent off
adere the discontinue enter; don-
ques de cel enrie le feme avera un
affile de novel dictafore, apres la
mort son baron evers le discon-
tinue, par ceo que le condition
fait tout ouerfement aniente, en-
tant que la feme fiet en son remi-
ter; incore le baron vesque sa

Also, if such discontinue make an estate of freehold to the husband and wife by deed indented upon condition, felicite, referring to the discontinue a certain rent, and for default of payment a re-entry, and for that the rent is behind the discontinue enter; then for this enrie the wife shall have an affile of novel dictafore, after the death of her husband against the discontinue, because the condition was altogether taken away, inasmuch as the wife was in her remitter; yet the husband with his wife can

feme ne poisset aver affise, pur coe not have an affise, because the hus-
que le baron eft ejfoppe, &c. band is cut off, &c.
&c.

IT is hereby to be observed, that the wife is presently remitted, and that the condition, Pl. Comm. in Amy Townsend's and rents, and all other things annexed to, or referred upon the estate (this is vanished Care. 1. R. v. R. Remitter. 18-
and defeated by the remitter) are defeated also. (1)

Sect. 680, 681.

JTEM, si le baron discontingua also, if the husband disconti-
les tenements sa feme, et nue the tenements of his wife,
re-prifaffate a lau par terme de life, the remainder after his
fa vie, le remainder apres son deceafe a la feme par terme de sa
decoafe a la feme par terme de fa wife; in this case this is no remitter
durant la vie le baron, par coe que during the life the
baron, la feme n'ad rienz en le
frankement. Met si en coe also the tenements of his wife,
as la feme juroquis le baron, and take back an estate to him
eco eft un remitter a la feme, pur for life, the remainder after his
eco que un frankement en ley deceafe to his wife for term of her
ejf och par luc magre le feen. &e. life; in this case this is no remitter
tant que le ne poisset aver action to the wife during the life of
ensers nal auter person, et en the husband, for that during the life of
vers luc mesme eil ne poisset aver action, the husband, the wife hath nothing
pur coe eft en son remitter in the freehold. But if in this case
Car en coe cas caut que la the wife surviveth the husband,
feme ne entra pas en les tenements, this is a remitter to the wife, be-
acore un efrange que ad cause cause in freehold in law is cut upon
de aver action, poisset fier son action heragainst her will. And inasmuch
ensers la feme de mesme les te-
le tenements, pur coe que el avit bien
tenant en ley, coment que el ne fait tenant in law. if he cannot have an action against
nom tenant en ley, coment que el ne fait any other person, and against her
tenant en fait.

Sect. 681.

CAR tenant de frankement en for tenant of freehold in deed
fait est cazy, que, i'il fait dif-
sele de * frankement, il poisset first of all he, who, if he be deprived of
avet affise: mes tenant de the freehold, may have an affise:
frankement en ley devant hon entre but tenant of freehold in law before
en fants, n'evoxer my affise. his entry in deed, shall not
Est f simien doit fitterf de certaine have an affise. And if a man be
terre, § et ad affice fays quel pret feized of certain land, and hath

and M. nor Rob. 5. en for added L. and M. and Rob. 6. et not in L. and M. nor Rob.

(1) VIII. The remitter defeats entirely the wrongful affise, and consequently every thing annexed to or issuing out of it. See ant. Sec. 664, 684, 688. and pass. Sect. 665, 668. But an estate made of the land stilled by him who is remitted, in a lease for years, is not defeated by the remitter. See Com. Dig. vol. ii. §. 418.
femme, et le pere devoit seise, et puis le fies devole devant ofan entrice fait per lay en la terre, le femme le fies ferra endove en le terre, et uscore il n'avoit nul francenement en fait, mes il avoit un fes et francemen- ment en ley. Et ict nostra, que princi- cipe quod reddat post auxzubien yvre maintainus envers celuy que ad francenement en ley, sicome en- vers celuy que ad le francenement en fait.

Here five things are to be observed. First, that a remainder expectancy upon an estate for life worketh no remitter, but when it fall in possession, i.e. before his time he can have no action, and no freehold is in him. Secondly, though the woman might waive the remainder, yet because she is present by the death of the husband tenant to the principec, it is within the rule of remitter, and her power of waiver is not material. Thirdly, that a freehold in law being call upon the woman by act of law, without any thing done or affainted to by her, doth remit her, albeit he be then sole and of full age. Fourthly, that a principec lyeth against one that hath but a freehold in law. Fifthly, that a woman shall be endowd where the husband hath the inheritance, and but a freehold in law, as hath beene fald in the Chapter of Dover.

Sect. 682.

ITEM, si tenant en taile ad if- jue deux fias de pleine age, et il lyffe la terre taile al eigne fies pur terme de sa vie, le remander al fies puisne pur terme de sa vie, et puis le tenant en taile moruir; un est cas l'eigne fies n'epas en son remitter, pur ceci que il prent eflate de son pere. Mes si l'eigne fies moruir saus ifuffe de son corps, dousque ceci si un remitter al puisne frere, pur ceci que il celi heire de le tayle, et un francemen- ment en le ley celi ejfebeaut, et siecle sur lay per force de le remander, et il y ad nul envers que il pois faier son action.

Also, if tenant in tail hath Issue two sons of full age, and he let- teth the land tailed to the eldest son for term of his life, the remainder to the younger son for terme of his life, and after the tenant in tail die; in this case the eldest son is not in his remitter, because he took an eflate of his father. But if the eldest die without issue of his body, then this is a remitter to the younger brother, because he is heire in taile, and a freehold in law is excheched, and call upon him by force of the remainder, and there is none against whom he may sue his action.

O' this opinion is [a] Lewen in our books; and of this sufficient hath beene fald in the next Section before. See hereafter [b] foure explanation hereof.

\[\text{\textsuperscript{c}}\] or. ade\textsuperscript{d}\ and M. and Reth.
In the same manner it is, where (s. Roll. Abs. 48a) a man is dispossessed, and the dispossessor dethroned, and the tenants descend to his heir, and the heir of the dispossessor make a lease to a man of the same tenants for term of life, the remainder to the dispossessor for term of life, or in tail, or in fee, the tenant for life dieth, now this is a remitter to the dispossessor, &c. causas quid supra, &c.

AND this stands upon the same reason that the cases in the two Sections precedent do.
See the next Section following.

NOTE, if tenant in tail inoffice his son and another by his deed of the land intailed, in fee, and livery of seisin is made to the other according to the deed, and the son not knowing of this agreement, not to the seisin, and after he which took the livery of seisin dieth, and the son doth not occupy the land, nor taker any profit of the land during the life of the father, and after the father dieth, now this is a remitter to the sonne, because the frehold is cast upon him by the survivor; and no default was in the same manner it is, where (s. Roll. Abs. 48a) a man is dispossessed, and the dispossessor dethroned, and the tenants descend to his heir, and the heir of the dispossessor make a lease to a man of the same tenants for term of life, the remainder to the dispossessor for term of life, or in tail, or in fee, the tenant for life dieth, now this is a remitter to the dispossessor, &c. causas quid supra, &c.

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Of Remitter.

Sect. 685.

Et le fitment cons-
gaissé, &c. en la vie-fant de ces, ne gaissé a fen puer, et il ad nu-le foitement. Here it ap-paredeth, that if the sonne be consent, and agree to the foitement, &c. this is no re-mitter to him. And therefore if the foitement were made by deed indented, and the sonne with the other sealeth the counterpart, and then the foitore makest livery to the other according to the deed, and the other dieth, the son is not remit-ted, because he was consent of the foitement, and agreed to the same; and Lettres Gîth in the case that he puteth, that was no default in the son, because he agreed not to the foitement in the life of the father: and so it seemeth, that if A. be seised in title, and have five two sons, and by deed indented between him of the one part, and the sons of the other part, maketh a livery to the eldest in life, the remainder to the second in fee, and dieth, and the eldest son dieth without issue, the second son is not remitted, because he agreed to the remain-der in the life of the father; or if the like effect had been made by parol, if in the life of the father the tenant for life had been implanted, and made default, and he in the re-mainder had been received, and thereby agreed to the remainder, after the death of the fa-ther and the eldest son without issue, the second son should not be remitted, because he agreed to the remainder in the life of the father; all which is well warranteth by the reason yielded by our author in this Section.

Sect. 685.

CAR fi hone fait dissiellé de cer-taine terre, et le dissielor fait un fait de foitement per que il infesit B. C. et D. et le livery de sefain eit fait a B. et C. mes D. ne fait al livery de sefain, ne unque gaissé a le foitement, un-que voile prender les profits, &c. et puis B. et C. deviennent, et D. eux jurogeoys, et le dissiellé port fon breie fur dissielín en le per ervers D. * il monstrea tout le matter, † coment il ne unques gaissé a le foitement, et il fuit il dijebargeru lay de dammages, cistit que le demandant ne recouver a fungi dammages evers lay, com-ment il fait tenant del frank-tennement del terre. Et naure le statute de Gloucester, § cap. 1. voit, que le dissiellé recouvera dammages en briefe de entre, founue fur § dissielín vers coly que est trouve tenant. Et cce eit un profe en l’auter caf, que entant

For if a man be dissiellé of cer-taine land, and the dissielor make a deed of foitement where-by he infesith B. C. and D. and livery of sefain is made to B. and C. but D. was not at the livery of sefain, nor ever agreed to the foitement; nor ever would take the pro-fits, &c. and after B. and C. die, and D. survive them, and the dissiellé bringeth his writ upon dissielín in the per against D. hee shall shew all the matter, how he never agreed to the foitement, and hee shall discharge himselfe of dammages, fo as the demandant shall recover no dammages against him, although he be tenant of the free-hold of the land. And yet the statute of Gloucester cap. 1. will, that the dissiellé shall recover dammages in a writ of entrie founded upon a dissielín against him which is found tenant. And this is a profe in the other caf, que


† et added L. and M. and Rob. § cap. 1. not in L. and M. and Rob.
that forasmuch as the issue in tail came to the freehold, and not by his act, nor by his agreement, but after the death of his father, therefore this is a remitter to him, inasmuch as he cannot sue an action of formemond against any other person, &c.

THIS case stands upon the same reason that the next precedent case does.

Mes chay que est troux tenant, &c. Here it appears, that acts of parliament are to be so construed, as no man that is innocent, or free from injury or wrong, be by a literal construction punished or condemned: and therefore in this case, although the letter of the statute is generally to give damages against him that is found tenant, and the case that Littium here puteth, D. being survivor, is consequently found tenant of the land; yet because he waived the estate, and never agreed to the feodain, nor took any profits, he shall not be charged with the damages.

Sect. 686, 687.

IT E M, si un abbe aliena la terre de son mesnay, a un auter en fee, et l'aliene por son fait charge la terre oye un rent charge en fee, et puis l'aliene in- eiusse l'abbe oye licence, a over et tenet al abbe et a ses successeurs a tous jours, et puis l'abbe morua, et un auter est echa, et fait abbe: en ce cas l'abbe que est le successeur, et son covent, sont en leur remitter, et tiendront la terre dischargé, por coe que mesnie l'abbe ne pat aover ascion, act ne briefs d'entrie fine affensu capituli, de mesnie la terre revient nul auter persen. (1)

ALSO, if an abbot alien the land of his house to another in fee, and the alienee by his deed charge the land with a rent charge in fee, and after the alienee indefeasibly the abbot with licence, to have and to hold to the abbot and to his successors for ever, and after the abbot die, and another is chosen, and made abbot: in this case the abbot that is the successor, and his covent, are in their remitter, and shall hold the land discharged, because the same abbot cannot have an action, nor a writ of entre fine affensu capituli, of the same land against any other person.

Sect. 687.

EN mesnie le maner est, lou un evêché, ou un deane, ou autre siecle persons aliena, &c. fine affens, &c. et l'aliene charge la terre, &c. et puis l'evêch que reprit effete de mesnie la terre por licence, a beuy et a fes...

The author having spoken of remitters to singular or several persons, as when the tenant and so some others, and to their heirs, and to them in reversion or remainder, and their heirs; now he speaks of remitters to bodies politic and incorporate, as to abbots, bishops, deaners, &c. And as divers do remit the heir which comes in the per, so succession doth remit the successor, albeit he be commissary in the poft. And in other cases where the issue in tail of full age shall be remitted, there in the like case shall the successor be remitted also, and defeat all mean charges and incumbrances.

Owe licence, &c. That is, of the king and the lords immediate and mediate, to dispense with the statutes of mortmain, whereas see more before, Sect. 140.

Sect. 688.

ITEM, if one hue fafl, such action ensnre the tenant in tail, sicome home void ever envelopes by a briefe d'entre en le poft, supposing per son briefe that the tenant in tail had not entre finon per A. de B. that differs l'ayel le demandant, et cos et fals, et il recover it. The tenant in the tail per default, et fufl execution, et puis le tenant. The tenant in tail moribus, son issue part ever briefe de formened envelopes hay que recovera; et s'il voile pleader le recovery. The tenant in the tail, l'issue part dire, que le dit A. de B. ne differs l'ayel celay que recovera, en le manner comme son briefe supposa, et sortent il faussera le recovery. Thus polyto que cto fuit voyer, que le dit A. de B. differs l'ayel le demandant que recovera, et que aprés le differs le demandant, ou son pierer, ou son ayel per un fait avoyent reliefs al tenant en taili tout le droit que il avoit en la terre, &c. et cos nivt contraff-
Of Remitter.

Sect. 688, 689.

In an action of account, it is a breach of the law to give a false account of the goods, wares, and merchandise sold, or of the service or work performed.

**Sect. 689.**

*Et il semble que feint action est autant a dire en English, a faigned action, c'est a saver, telle action que comporte que les paroles de la breve sont vagues, ou celles per certaines causes il n'a cause ne titre par la loy de recouvrer par misine l'action. Est fausse action est, tow paroles de brifere sont faus. Et en les deux cases avanitimis, fi le cas fuit tiel, que apres tiel recovery, et execution

**Land, ecc. and notwithstanding this, he sue a writ of entrie in the post against the tenant in taile, in manner as is aforesaid, and the tenant in taile plead to him, that the said A. of B. did not devise his grandfather, in such manner as his writ supposes; and upon this they are at issue, and the issue is found for the demandant, whereby he hath judgment to recover, and sueth execution; and after the tenant in taile died, his issue may have a writ of formedon against him that recovered; and if he will plead the recovery by the action tried against his father who was tenant in taile, then he may shew and plead the release made to his father, and so the action which was sued, feint in law.*

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*In recovery of the tenant in taile per deputation. Lisitur addeth (by default) because if the recovery pass upon an issue tried by verdict, he shall never falsely in the point tried, because an action might have been had against the jurors; and about all the jurors be dead, so as the attaint do fail, yet the issue in taile shall not falsely in the point tried, which, until it be lawfull avoided, pro certitate acceptoris. As if the tenant in taile he implented in a formedon, and he traverseth the gifts, and it is tried against him, and thereupon the demandant recover; in this case the issue in taile shall not falsely in the point tried, but he may falsifie the recovery by any other matter: as that the tenant in taile might have pleaded a collateral warranty, or a release, as Lisitur here puteth the cause, or to confess and avoid the point tried. And Lisitur's cause holdeth not only in a recovery by default, whereas he speaketh, but also upon a nulli dubi, or confession or demurrer.

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*per fuit not in L. and M. nor Roh. + er added L. and M. and Roh.
ent fait, le tenant en taile a dix-
fois ecyg que recoutra, et en-
mortu fait, per que la terre dis-
cendit a fon issue, ceost en re-
mitter al issue, et l'issue est ens per-
force de la taile; et pur cest caufe
jo oye mis les deux caese prece-
dents, pur enforcer toz, mon ffe,
que l'issue en taile per force
d'un dicult fait a luy apres un re-
coutry et execution fait ens ens
auncefez, poit oyez autz bien
en fon remitter, jefonte il ferait
per le dicult fait a luy apres un
dificomnence fait per fon aun-
cefez de les terres tailes per
fecontment en paiz, on autement,
&c.

Here Linneo explaineth what a faite action is, and what a falsa action is, which is
plainte and pernicious. And here it is to be observed, that a remitter may be had after
a recovery upon a faite action by a difficu and a dicult, aswell as by a dicult after a dis-
continence by a fecontmen, &c.

See hereafter sect. 109.
12. E. 4. 40. Dier
in Mary Farnington's cafe,

Also, in the cafes
foresaid, if the
cafe were shuch, that af-
ter that the demandant
have judgement to re-
cover against the ten-
ant in taile, and the
fame tenant in taile
dieth before any execu-
tion had against him,
whereby the tenements
descend to his issue, and
he who recovereth fn-
eath a feire facias out
of the judgement to
have execution of the
judgement against the
issue in taile, the issue
shall plead the mat-
ter

9 191 added L. and M. and Rob.