Of Warrantie.

Sec. 734.

Item, si tenant en taille soit

ALSO, if tenant in taille be leased of lands devisable by teftament after the custome, &c. and the tenant in the tayle alieneth the fame tenemates to his brother in fee, and hath ifue, and dieth, and after his brother devileth by his teftament the same tenemates to another in fee, and bindeth him and his heires to warrant the land in forma probata; 'tis this warrantie shall extend to the fooffee and his heires: but if he had waunterd the land to the fooffee, the warrantie had not extended to his heires, except the words had bee in him and his heires.

If a man letther lands for life, the remainder in tayle, the remainders cadem formâ, this is a good esate tayle, quia idem fener exterior proximo precedenti. (4)

Sec. 734.

ITEM, si tenant en taille soit

feoffin whereof he might make a feoffment. And this is grounded upon the said statute of 1375, the words whereof are, Il n'ait ses fons premier en preffe, et maintenir ensuite en rembre, otherwise the tenant must be driven to his warrantia cartere.

(2) For a warrantie of if feoff cannot enlarge an esate: as if the lesse by deed relese to his lessee for life, and waunterd the land to the lessee and his heires, yet doe not this enlarge his esate.

(3) If a man make a feoffment in fee with warrantie to him, his heires and assignes by deed (as it might be), and the fooffee endoofeth another by poll, the second fooffee shall vouchs, or have a warrantia cartere (as hath beene said) as assignes, albeit he hath no deed of the assignement, because the deed comprehending the warrantie, doth extend to the assignes of the land; and he is a sufficient assigne, albeit he hath no deed.

(4) If a man inoffe two, their heires and assignes, and one of them make a feoffment in fee, that feoffee shall not vouch as assignee. (1)

If a man make a feoffment in fee to A. his heires and assignes, A. inoffe B. in fee, who re-inoffe A. he or his assignes shall never vouch, for A. cannot be his own assignee. But if B. had inoffed the heire of A. he may vouch as assignee; for the heire of A. may be assigne to A. insomuch as he claimeth not as heire.

(1) If a man make a feoffment by deed of lands to A. to have and to hold to him and his heire, and bind him and his heires to warrant the land in forma probata; 'tis this warrantie shall extend to the fooffee and his heires: but if he had waunterd the land to the fooffee, the warrantie had not extended to his heires, except the words had beene in him and his heires.

If a man letther lands for life, the remainder in tayle, the remainders cadem formâ, this is a good esate tayle, quia idem fener exterior proximo precedenti. (4)

* terrae-tenementos, L. and M. and Robs.

† mefnes not in L. and Mr nor Robs

‡ que il se not in L. and M. nor Robs

(1) i.e. if he have not his warrantor present.

(2) The other may vouch for his moter, as is observed in the preceding page: but if they make partition, both have lost it. Hoh. 33.

(3) A man inoffeth three by deed, and warranteth the land to them, et cohabitant enem, this is a joint warrantie, because the esate or interest was joint, but if the esates were sevare, the warrantie would he sevare. C. Rep. 49.

(4) Upon a familiar principle it was held, that a purson could not devise land in frankmurrages, because the done could not hold of the donor. Ann. 24. b.
der de lay al iffue en le tayle, 
&c. car nal chosse poit defen- 
der del ancester a fan heire, 
jinon que meyne ces fuit en l’an- 
cesfer.

held to warrantie, such warrantie 
may not descend from him to the 
iffue in the tayle, &c. for nothing 
can descend from the ancestor to 
his heire, unlesse the same were 
in the ancestor. (1)

Here our author declereth one of the maximes of the common law, that the heire shall 
ever be bound to any expresse warrantie, but where the ancesfer was bound by the 
same warrantie; for if the ancesfer were not bound, it cannot descend upon the heire, 
which is the reason here yeilded by Littlem. (1) If a man make a feoffment in fee, 
and binde his heires to warrantie, this is void by the warrantie of this maxime, as to the heire, 
because the ancesfer himeselfe was not bound. Alfo, if a man binde his heires to pay a summe 
of money, this is void. And of the other sides, if a man binde himeselfe to warrantie, 
and binde not his heires, they be not bound; for he must say, as it appeareth before, &c. et be-
rer des me warrantia, &c. &c. &c. and Ptes 5th. Note how heires are suckt in English ad 
dolica antecessoris redenda, nisi per antecessorem ad loc foreit obligatus, protrahem dolita regula-
rationis: A feriarii in cause of warrantie, which is in the realite.

Burra warrantie in lawe may binde the heire, although it never bound the ancesfer, 
and may be created by a fall will and ereditament. [a] As if a man devise lands to a man for 
life or in taile referring a rent, the devisee for life or in taile shall take advantage of this 
warrantie in lawe, albeit the ancesfer was not bounden, and shall binte his heires to warrant-
ies, although they be not named. Alfo an expresse warrantie cannot be estate without 
deed, and a will in writing is no deed, and therefore an expresse warrantie cannot be created by 
will.

Sect 735.

Auxt, a warrantie ne poit 
aller a folonque la nature 
des tenemics per le custome, 
&c. mais tantement folonque le 
forme del common ley. Car si 
le tenant en taile fai feifie des 
tenements en burgh Englishe, 
lou le custome ef, que tous les 
tenements deus meyne le bo-
rough devoyent dijrenders a le 
 fits paizinh, et il discontinue le 
tayle ose garrantie, &c. et ad 
iffue deux fits, et meruy feifie des 
auters terres ou tenements en 
meyne le burgh en see simple a 
le value ou plus de les te-
tenements tailles, &c. encore le paizinh 
fits auroit un formedon de les 
terres tailles, et se fiera my barre 
per le garrantie fuy per, comme 
que affets a luy deijendi en see 
simple de meyne le peizinh, folonque

10. Rep. 96.]

(1) (Hob. 170. Ant. x gps. 6.)
Brathen. 2. a. 91. 413.
(2) Britton. tol. 160. b.
(3) Pitea. liv. 2. cap. 55.
(4) Britton tol. 8&. b. 11. H. 48.

Sect 735.

Als, a warranty cannot goe 
according to the nature of 
the tenements by the custome, 
&c. but only according to the 
forme of the common law. For 
if the tenant in taile be seifed 
of tenements in borough Englishe, 
where the custome is, that all the 
tenements within the same bo-
rough ought to descends to the 
youngest fonse, and hee disconti-
nue the taile with warranty, &c. 
and hath iffue two fonnes, and dy-
eth seifed of other lands or te-
lements in the same borough in see 
simple to the value or more of 
the lands entailed, &c. yet the young-
est fonse shall have a formedon of 
the lands tailles, and shall not bee 
barred by the warranty of his fa-
ther, albeit affets descendsed to him 
in see simple from his said father

* folonque—sans, L. and M. and Rob.
† terres—tenements, L. and M. and Rob.

(1) It is a general rule, that the heire cannot take any thing by descents when the ancesfer is excluded from taking. Ant. 99. c. 1.
If a father and his heire appertne join in a warranty, the heire is doubly bound, by his own warranty, and as heire to his father.
Moon. 20.

According to the custom, &c. because the warranty defencedeth upon his elder brother who is in full life, and not upon the youngest. And in the same manner is it of collateral warranty made of such tenements, where the warranty defencedeth upon the eldest son, &c. this shall not barre the younger son, &c.

Sect. 736.

In the same manner is it of lands in the county of Kent, that are called gavelkind, which lands are divisible between the brothers, &c. according to the custom; if any such warranty be made by his ancestor, such warranty shall defend only to the heire who is heire at the common law, that is to say, to the elder brother, according to the constance of the common law, and not to all the heirs who are heirs of such tenements according to the custom.

Herrupon a diversite is to be observed between the lien real, and the lien personall; for the lien real, so the warranty, doth ever defend to the heirs at the common law; but the lien personall doth bind the special heir, &c. to all the heirs in gavelkind, and the heire on the part of the mother, as hath been said.

If two men make a feoffement in fee with a warranty, and the one die, the feoffee cannot vouch the survivor only, but the heire of him that is dead also; but otherwise, if two joyously bind themselves in an obligation, and the one die, the survivor only shall be charged.

Sect. 737.

If E. M. so tenant en le taille adiffe two daughters by divers venters, and dieth, and the daughters enter, and a stranger enter his no. tenement, and the tenement be divided, and remaineth, and the stranger defendeth the tenement, and one of them relieth by her deed to the stranger all her right, and bindeth herheirs to warranty, and die without issue: in this case the

Also, if tenant in taile hath issue two daughters by divers venters, and dieth, and the daughters enter, and a stranger defendeth them of the same tenements, and one of them relieth by her deed to the stranger all her right, and bindeth her and herheirs to warranty, and die without issue: in this case the
Of Warrantie. Sect. 738.

for that survievyeth poit bien ent-
ter and ouster le differiof de toute
les tenements, pur ce que tel
garrantie n'et pas discontinu-
ance ne collateral garantie a la
for que survievyeth, pur ce que
ils font de dings fautes, et iun ne
poit ayre boire a l’auter, foloquie
le cours del common ley. Mes
outrement ejf, los y vont fites del
tenent en taile per un misfine
venter.

The reason of this is In respect of the halfe blood, whereas sufficient hath beene fayd in the first booke, in the Chapter of Fee Simple.

Two brothers he by demy venners; the eldier releaste with warrantie to the differiof of (Ann 12, 3. 14. 2.)

the unclely, and dieth without issue, the uncle deth, the warrantie is removed, and the younger brother may enter into the land.

Sect. 738.

ITEM, si tenant en taile dafyia les
tenements a un* home par terme de vie, le
remindere a un au-
ter en fef, et un col-
Later ancesstef cor-
fmna le fite del
tenent a terme de vie,
et oblige ley et fees
beire a garantie per
terme de vie del
tenent a terme de vie,
et moruyfi, et le tenant
en taile ad ifue et de-
vie, ore l'ifue ejf barre
da demander les
tenements per brieff de
formedon durant le
vie le tenant a terme de vie, per caue del
collateral garantie di-
scediu sur l'ifue en
le taile. Mes apres
del decafe del
tenant for life,
sifter which survivor may well
enter, and ouit the differiof of all
the tenements, because such war-
 rantie is no discontinuance nor
collateral warrantie to the sifter
that survievyeth, for that they are of
halfe blood, and the one cannot be
heire to the other, according to the
courte of the common law. But
otherwise it is, where there bee
daughters of tenant in taile by one
venter.

ALSO, if tenant in
taile lethe the
lands to a man for
terme of life, the re-
mainder to another in
fee, and a collateral
ancestor confirmeth
the state of the tenant
for life, and bindeth
him and his heires to
warrantie for terme of
the life of the tenant
for life, and dieth, and
the tenant in taile hath
issue and dies; now
the issue is barred to
demand the tenements
by writ of formedon
during the life of
tenant for life, because
of the collateral warrantie descended
upon the issue in taile.

HERE it appeareth, that
a warrantie may be rull-
ed by a confirmation which
transferrith another estate nor
right, whereas sufficient hath
beene fayd before.

A garrantie pur
terme de vie, &c. (2)

This proveth that a warrantie
may be limited, and that a
man may warrantee a well
terme of life or in taile,
as in fee. (1)

If tenant in fee simple (4. Rep. 8o. Ant. 39s. Hob. 158)

that hath a warrantie for
life, either by an express
warrantie or by deth, be im-
plieded and unexct, fre shall
recover a fee simple in value,
althoe his warrantie were
but for terme of life, because
the warrantie extended in
that case to the whole estate
of the tassifie in fee simple; (3)
but in the case that Lindon
(6. Cor. 152)
here puteth, the tenant for
life shall recover in value but
an estate for life, because
the warrantie doth extend to that
estate only.

Un brieff de for-
medon, &c. (11. N. E. 211. 211. 3. 215. 6.)

Here is
implied, that a collateral
warrantie giveth no right,
but

* home not in L. and M. nor Rob.

(1) From this it appears, that the warrantie ceases on the expiration of the estate to which it is annexed. In Smith v. Tyndal, Salk. 354. 654, it was held, that no warrantie ceases by a right, but only a kind, or has it so long as the warrantie continues in
force; for if the warranty be calculated, the ancient right reseveth.

(2) Though the warrantie be temporary, yet the thing warranted to be recovered is perpetual; for it is a warranty of a fee,
not a warranty in fee. Hob. 14.
but shall have only for life, and after the partiz is reduced to his own.

It is also to be observed, that a warrantie may descend to the heirs of him that made it during the life of another.

**Sect. 739.**

And upon this I have heard a reason, that this cae will prove another cae, viz. if a man leteth his lands to another, to have and to hold to him and to his heirs for term of another's life, and the leasee dieth living, the heir of the leasee may put him out, &c. because in the case next aforesaid, inasmuch as a man may bind himself and his heirs to warrantie to tenant for life only, during the life of the tenant for life, and this warrantie descenden to the heir of him which made the warrantie, the which warrantie is no warrantie of inheritance, but only for term of another's life: by the same reason where lands are let to a man, to have and to hold to him and his heirs for term of another's life, if the leasee die living the heir of the leasee shall have the lands, living during the life of the heir a que vie, &c. For they have said, that if a man grant an annuity to another, to have and to take to him and his heirs for term of another's life, if the grantee die, &c. that after his death his heir shall have the annuity during the life of the heir a que vie, &c. *Quatre de hila materiale.*

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*briefe de not in L. and M. nor Rob.*

*The* not in L. and M. nor Rob.

*ille le vie,* in L. and M. and Rob.

*ille mort not in L. and M. nor Rob.*

*termes not in L. and M. nor Rob.*

BUT where such leaves or grant is made to a man and to his heirs for a term of years, in this case the heire of the leaf or the grantee shall not after the death of the leaf or the grantee have that which is for ever or for a term of years. If the leaf or the grantee be for ever, because it is a chattel real, and chattel real by the common law comes to the executors of the grantee, or of the leaf, and not to the heire. [1]

If a bishop hath a ward fallen and dieth, the king shall come to the executors of the grantee, or of the leaf, and not to the heire. [2]

In some cases, it may be, that albeit a collateral warrantie be made in fee, &c. yet such a warrantie may be defeated and taken away. As if tenant in tail discontinue the tail

ITEM, en of our cases it may bee, that albeit a collateral warrantie be made in fee, &c. Here as before in this Chaprer hath been noted the collateral warrantie doth depend upon the issue in tailie, before any right doth descend unto him, wherein this diversity is to be observed. Where the right is in chief in any of the ancestors of the heire, at the time of the descent. [3]

* See added L. and M. and Rob.

(1) The several alterations have been made in the law of occupancy, by statutes passed since Sir Edward Coke's time. See ante. 94. In note 5.
In the former cases put by Littleton, the warranty determined, upon the natural expiration of the estate to which it was annexed: hence it devolves by the estate being defeated. But in an estate to be bound by a warranty, and afterwards the estate to which the warranty is annexed be defeated, as to a point, but is not in the estate, the warranty shall not be defeasible. As if tenant for life, remainder to A, be defeated, and an estate of freehold in B belongs to the defeated, the warranty shall be defeasible, and the remainder will be bound by the warranty. Sec 1. Rowl. Abr. 540. 1. 541. 5. And see Com. Dig. vol. 3. 534. 913.
the warrantee made; for if the beire of the wife bring an aille of mordacceus, this action is grounded after the warrantee, whereas, as hath hitherto, the warrantee shall not extend. 

So it is if the grantee of the rent grant it to the tenant of the land upon condition, which maketh a foellment of the land with warrantee, this warrantee cannot extend to the rent, ubi it the foellment was made of the land discharged of the rent; for if the condition be broken, and the grantee be intituled to an action, this must of necessity be grounded after the warrantee made. 

But in the case aforesaid, when the warrantee of the rent morts the tenant, and the tenant maketh a foellment in fee with warrantee, and dieth, in a case in such brought by the wife (as by law the may), [f] the foellion shall vouch as of lands discharged at the time of the warrantee made, for that her title is paramount to so if tenant in title of a rent charge purchase the land, and make a warrantee, if the issue bring a servient of the rent, the tenant shall vouch as of the land discharged of a rent service. 

[f] The servient of warrantee extend unto meere and sealed titles, as by force of a condition with clause of re-entry, exchange, warrantee, content to the ray fater and the like, because that for the no action doth fye; and if no action can be brought, there can be neither warrantee, vouch of warrantee cause, nor rebutter, and they continue in such plight and cleance as they were by their original creation, and by no act can be dispayed or servile out of their original offence, and therefore cannot be bound by any warrantee. 

[f] And albeit a woman may have a writ of dower to recover her dower, yet because her title of dower cannot be servile out of the original offence, a collateral warrantee of the ancestor of the woman shall not barre her. So it is of a foellment servient marriti sim proleps. 

[f] A warrantee doth not extend to any lease, though it be for many thousand years, or to estates of tenant by statute duple, or merchant, or virgin, or any other duty, but only to freehold or inheritance, as it appeareth in all deedms of leases which be put in this Chapter. And this is the reason, that in all actions which lats for years may have, a warrantee cannot be servile in barre, as in an action of treesale, or upon the statute of 4 R. 4. and the like. But in those actions when the freehold or inheritance do come in question, there the warrantee may be servile; but in such actions which move but a tenant of the freehold can have, as upon the statute of 8 H. 6. aille, or the like, there a warrantee may be servile in barre. 

[f] Rant garransit erat a un bonne for eftats, que adnegé il avoit, il eftat fait defect, le garransit est defect. Here it appeareth, that although a collateral warrantee be defeinded, [f] yet if the date whereunto the warrantee was annexed be defeinded, albeit it be by a mater Brynger (as in this case that Lutens here put by the discontinue), the warrantee is defeinded; and although the discontinue remaineth, and no remitter brought to the heirs, yet the warrantee is defeinded, and barre removeth, so the issue in titles may have his servient, and servile over the land. Sebo prinicipi tollat ultima justitiam. 

[f] EN mene le manner est, si le discontinue fait foellment en fei, refervant a luy un certain rent, et par defaut de payment un re-entry, &c. et un collateral * garransit de ancestor est fait a velly servile que ad eftates pour condition, &c. et mortify son issue, comme que cet garransit discontinue fut l'issue en tains, mense si apres le rent fait adverser, et le 

[f] In the same manner it is, if the discontinue make a foellment in fee, referring to him a certain rent, and for default of payment a re-entry, &c. and a collateral warrantee of the ancestor is made to the foellion that hath the estate upon condition, &c. and dieth without ille, albeit that this warranty shall defeind upon the issue in tays, yet if after the rent be behind, and the al-

[f] * garransit de anc. after est fait fool-assu, de servile, in l. and M. and Roh.

[f] (1) The foellion with warranty cannot take any advantage of the warranty, which be tenant of the land. 2 E. 4. 3. 6.

[f] (2) If a man make a foellment with warranty, no foellion is a good plea, for if the foellion be suit, the warranty is service arrears for that depend upon the foellment. But if he in manner doth tye for to sue, and conveys that he will make and discharge the land to the latter, if the latter be suit, whether it be by one that hath or hath not title, he shall have a set of warrantee. Browne's Rep. Part 1. fol. 145.

discontinuance entra en la terre *, adonqu'es servall'issu en taile fors re-
covery per briefe de formeson, pur ceo que le collateral garrantie est de-
feet. Et issi est a fain tiel collater-
ral garrantie soit pléder envers l'issu en la taile, en son action de
formeson, si poit montrer le matter
come est avantdit, coment le gar-
rantie est deheat, &c. et issi est il poi-

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

HERE Littlen putteth another cause upon the same ground and reason, viz. where the
false whereby the warrantie is annexed is defeated, there the warrantie it self is de-
feated also, which is one of the maximes of the common law.

Sect. 743.

ITEM, si tenant en taile fait
un feoffement a son uncle, et
puis l'uncle fait un feoffement
en fee euclue garrantie, &c.
a un auter, et puis le feoffe del
uncle enfeoffa a l'uncle en
fee, et puis l'uncle enfeoffa un
effrange en fee sans garrantie, et
murs, sauf issu, et le tenant en
taile murifs, si issu en la taile
vole, porte fon breve de formeson
envers l'effrange que fuit le dar-
ren feoffe, &c. et ceo per l'uncle,
lefue ne sera une barre per
l' navigation que sait fait per l
uncle a litz primer feoffe de son
uncle, par eio que le dit garran-
tie est deheat et acquit, par eio
que l'uncle a liz, par repriji ce grand
esat de son § primer feoffe a que
le garrantie est fait, foinne meme
le feoffe avoit de liz. Et la cause
par que le garrantie est auncit en
ceo eis eio, felicici, que si le
garrantie obtient en sa force,
doue l'uncle garrantera a liz
meme, que ne poit eisère.

ALSO, if tenant in taile make a
feoffement to his uncle, and
after the uncle make a feoffement in
fee with warrantie, &c. to another,
and after the feoffe of the uncle
both re-enfeoff aganist the uncle in
fee, and after the uncle enfeoffeth a
stranger in fee without warrantie,
and dieth without issue, and the te-
nant in tyle dieth, if the issue in
taile will bring his writ of forme-
don against the stranger that was
the last feoffe, and that by the un-
cle, the issue shall not be barred by
the warranty that was made by the
uncle to the first feoffe of his un-
cle, for that the faid warrantie was
defeated and taken away, because
the uncle tooke backe to him as
great an estate from his first feoffe
to whom the warrantie was
made, as the same feoffe had from
him. And the cause why the war-
rantie is defeated is this, viz. that
if the warrantie should stand in his
force, then the uncle (should war-
rant to himselfe, which cannot be.

Here
There is another case where a warranty may be defeated. As when the uncle takes back as large an estate as he had made, the warranty is defeated, because he cannot warrant land to himself. [g] And so it is if the uncle had made the warranty to the foecro, his heirs and assignees, and taken back an estate in fee, and after infeoffed another, yet the warranty is defeated, for that he cannot be his own heir, and a man shall not regularly vouch his heir as assignee of a fee simple, and the law will not suffer things inutile and unprofitable. [h] And yet if the father be infeoffed with warranty to him and his heirs, the father infeoffeth his heir apparently in fee and die, he (as it hath been said) shall vouch his heir, and the heir in borow English, by reason the act in law determined the warranty between the father and the donee.

[1] But if a man make a feufoement in fee with warranty to the foecro, his heirs and assignees, and the feufoe re-infeoffeth the feufoe and his wife, or the feufoe and any other stranger, the warranty remaineth still; or if two doe make a feufoement with warranty to one and his heirs and assignees, and the feufoe re-infeoffeth one of the feufoes, the warranty doth also remaine.

\[判定\]

\[Section 744.\]

\[Mes si le foecro s"enfuit esfate al uncle pur terme de vie, ou en taille, fauuant le reverzion, &c. ou que il fait done en uncle, ou un les pur terme de vie, le remainder outfer, &c. en cest cas le garantie n"est pas tout ouuerferment anci, mes est mis en superfice durant l'esfate que l'uncle ad. Car apr"es cec que l'uncle est mort sans ifue, &c. donquest celay en le reverzion, ou celay en le remainder, barrez l'ifue en taille en fon briefe de formerion per le collateral garantie en tiel cas, &c. Mes aucterment est lou l'uncle a voit auxa grand esfate en la terre de le foecro, a que le garre\]

\[But if the feufoe had made an esfate to his uncle for term of life, or in tail, saving the reverzion, &c. or a gift in tail to the uncle, or a lease for term of life, the remainder over, &c. in this case the warranty is not altogether taken away, but is put in superficie during the esfate that the uncle hath. For after that the uncle is dead without ifue, &c. then he in the reverzion, or he in the remainder, shall barre the ifue in tail in his writ of formeden by the collateral warranty in such case, &c. But otherwise it is where the uncle hath as great esfate in the land of the feufoe to whom the warranty was made, as the feufoe pur terme de vie, ou en taille. Here it appeareth [4] that by taking a [1] lease for life, or a gift in tail, the warranty is superseded. A man infeoffeth a woman with warranty, they intermarry and are implicated, upon the death of the husband, the wife is received, the feufo voucheth her husband, &c. making withstanding the warranty was put in superficie. [5] And so on the other side, a woman infeoffeth a man with warranty, and they intermarry and are implicated, the husband shall vouch his heir and his wife by force of the said warranty.

\[Valor\]

\[An infant en ceste fa\]

If the tenant shall not be entitled to his warrantie, but that the disconsolite shall recover against the tenant in his name, and he take advantage of his warrantie, if any her hath, and after in a forsworn brought by the tenant, the disconsolite shall barre him in respect of the warrantie and affairs; and to every man's right saved. (1)

Sect. 745.

OU relase fait per luy owe garantiss.  Note a warrant-ne grounded upon a release. Hereof you shall make before in this Chapter.

Soit attaint de fe-lony, ou outrage, &c.  Note, according to Licetere here, there are to be two manner of attainters: the one is after appearance, and that in three manneris; by confession, by bailly, or by verdict; the other upon process to be outlawed, which is an attainer in law. But (as hath been said) there is a great diversitie, as to the forfeiture of land, berevanc an attainer of felony by outlawry upon an accuse, and upon an indiction; for in the case of an accuse the defendant shall forfeit no lands, but such as he had at the time of the outlawrie pronounced; but in case of indictment, such as he had at the time of the felony committed. And the reason of this diversitie is evident; for that in the case of accuse there is no time alledged in the writ when the felony was done, and therefore was needful that in the case of indictment there be time alledged, in the indictment itself. And in the case of indictment there is a certain time alledged, and therefore is in that case it shall relate to the time alledged in the indictment when the felony was committed. But in the case of the indictment there is a certain time alledged to be observed; (2) for, as hath been said, it shall relate to the time alledged in the indictment for avoiding of otherse, charges, and inuencemans, made by the felony after the felony committed; but for the meane profite of the land it shall relate only to the indictment, aswell in this case of outlawrie as in other cases. And where Licetere faileth, (attaint de felon) if a man be convicted of felony by verdict, and delivered to the ordinary to make purpary, (3) he cannot be vouched, for that the time of his puration (if any should be) is uncertain, and the demandant cannot be delayed upon such an uncertain case; but the tenant is not without remedy, for he may have his warrantiie carted.

Sect. 746.

Attaint. Of this word hath been spoken in the second Book in the Chapter of Villelgrave.

Dean Hale's case in Pl. 2. Upon several attendantes of felonies, there be three several writs of ecchaste, viz. * first, when he hath judgement to be hanged; secondly, when he is outlawed; thirdly, when he abjures the realm.

Sect. 747.

The defendant in an accuse of death did wargue ballest, and was flaine in the field, yet judgement was given that he should be hanged; and the.justices said, that he is altogether nonsatisfacie that such a judgement be given, for otherwise the lord could not have a writ of ecchaste. (4) And in cito it hath been hence, that a man hath been attainted after his death by perjurement. (5) The difference between a man attainted and convicted is, that a man is fait conviet before her hath judgement; as if a man be convicted by confession, verdict, or receinate. And when he hath his judgement upon the verdict, confession, or receinacye,

(1) But clearly, if the warrantie were never exercised, as in the ease of se faire render with warrantie and office, there shall be a rectorie. Lord ELMS. MSS.
(2) In Licetere's jurisdiction, if he doth not execute, he is forfeited to all others, and he is now to be termed, or called the husband or wife, except in special cases, either for the advantage of the husband or wife, or the husband or wife, the man thus married; yet I do not forbid his lands nor goods; but if the chief justice (a very learned man) doth in his hand and office, he shall have record thereof, and return it into the king's bench, he shall forfeit lands and goods in fee, chief justice, the king's

(3) In these cases, if the tenant shall not be entitled to his warrantie, but that the disconsolite shall recover against the tenant in his name, and he take advantage of his warrantie, if any her hath, and after in a forsworn brought by the tenant, the disconsolite shall barre him in respect of the warrantie and affairs; and to every man's right saved. (1)
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Of Warrante. Sect. 745.

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recourse; or upon the outlawrie, or obstruction, then is he fald to be attaine. And thus is the law taken at this day, notwithstanding (f) some diversifie of opinions in our booke.

If a felon be convaite by versus, constellam, or recorcie, he doth forfeite his goods and chattels, &c. prefente. (g) For where a reason hath been yielded in our booke, that the praying of his clergy was a refall of the judgment of the law, and a flight in law, and for that cause he forfeited his goods and chattels, that doth not hold; for if a man be convict of the treason, or murder, or any other crime, for which he cannot have his clergy, yet by the very conviction he forfeiteth his goods and chattels before attasuider. And (j) Stannard (speaking of a felon convict by verdict) faith, that he shall forfeit his goods which he had at the time of the verdict given, which is the conviction in that case; and by the statute of 7 & 8. reg. 4. notherly, bailifies, &c. shall lye the goods of a felon before the

 bounding of the felony; whereby it appeareth, that the goods may be sold as forfeit after conviction. And the [2] old statute is worthy of noting: *Præsulium quod in curia reperiet deduxit juramentum sibi, nullus de eo vultus habeat exerxis pro sedem hominum et ad fidem pro qualibet injuriam, damnificat iuris et commissam uti custodii constituat fiduci. By a conviction of a felony, his goods and chattels are forfeited; but by attasuider, that by judgment given, his lands and tenements are forfeited, and his blood corruped, and not before.

If the partie upon his assignment refuse to answer according to law, or fay nothing, he shall not be adjudged to be hanged, but for his contempt, to face for 2 dayes, which worketh no attainder for the felony, nor forfeiture of his lands, or corruption of blood; but in case of high treason, if the partie refuse to answer according to law, or fay nothing, he shall have such judgement by attasuider, and he shall be convicted by seised or confirmed. 

I. Felonie. (k) Ex officio sigillibus capitibus crimini facta ex Paulo perpetuum, in which no husband is fald to be done per feloniam, and is so approyv rethink, as feloniam cannot be express by any other word. (l) And in a great measure this word (feloniam) was, of so large an extent as it included high-treason; and therefore in our ancient booke, by the pardon of all felonies, high-treason, or counterfeiting of the great seale, and by the king's conten, &c. was pardoned. (m) But afterwaere it was removd, that in the king's pardon or charter, this word (feloniam), should only extend to common felonies, and that high-treason should not be comprehended under the same, and therefore ought to be specially named. And yet that a pardon of all felonies should extend to pettie treason whereasby the law at this day under the word (felonies) in cimmissions, &c. is included pettie treason, murdery, burning of houses, burglarie, robbie, rape, &c. chance-makery, &c. of hawking, and pettie larceny. (e) For such of these crimes for which the any might have this judgment, to be hanged by the stroke till he be dead, he shall forfeit all his lands in fee simple, and his goods and chattels; for having by chance-makery, or by atteendome, or pettie larceny, he shall forfeit his goods and chattels, and no lands of any effcute of frehold or inheritance. And all felomies punishable according to the course of the common law, are either by the common law, or by statute. There is also a felony punishable by the civil law, because it is done upon the high fae, as pyracy, robbie, or murder, whereas the common law did take no notice, because it could not be tried by twelve men. If this pyracy be tried before the lord admitter in the admiral, according to the civil law, and the delinquens there attaundered, yet shall it work no corruption of blood, nor forfeiture of his lands; other- wise it is if he be attaundered before constellamers by force of the statute of 28 & 29. Eliz. 4. the expresse pursuice of that statute, about the end of the reign of queene Elizabeth, certaine English pyracy, that had robbd on the sea merchants of Petiers, in anie with the queene, being not known, obtained a commotion pardon, whereby, amongst other things, the king pardoned them all felonies. It was [n] refolowed by all the judges of England upon conference and advisement, that this did not pardon the pyracy; for seeing it was not felonie whereas the common law took conscience, and the forfeiture of 28. Eliz. did not alter the offense, but oonstitute a trivial and indelit punishment, therefore it ought to be punisched specially, or by words which rauent amount, and not by the generall name of felony; and according to this resolution the delinquents were attaundered and executed.

Of the worke of the woodward, which significat a rover at sea. Attaunder of heretike or pozerneurwerketh no corruption of blood, nor heretike, forfeiture of lands; but in case of pozerneuer, forfeiture of lands in fee simple, but not of lands in tails, as formerly hath been fald. (l) There is a statute of 26 & 29. Eliz. 2. for the seare of com and de armeis, or for therftakers aumens per foristat sod obices, or to be the king's will, huyly, lands, and goods, and the like, these are extended to the hufe of life or member, but to imprisonment, lands and goods. (m) But if an act of parliament faith, Eiol judges of vie or member, en eiond secore vvz. vi. in curiae, that in case of judgement of death shall be given, as in case of schene, viz. that he be hanged

(1) On the prævia foro et dare, see Mr. judge Blackstone's Commentaries, vol. 4. p. 27.
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hanged by the neck till he be dead. and consequently his blood is corrupted (as the author here faiths) and shall forfeit as in case of felonie.

(4) There is also a court of the coniviable and marshall, who have constant of contrivances deeds of arms, and of most out of the realm and all other things tending to warre within the realm, which may not be determined or diffused by the common law, and all other apposite

evidences done out of the realm, and they proceed according to the civil law; but their things more properly pretext to another kind of treason, and therefore I shall speak nothing thereof, but only for the satisfaction of the English reader, to quote some authorities of law touching the jurisdiction of that court, that he may have some tale thereof.

In the same manner it is, if a man be attainted of high-treason, the warrantie is also 
defected.

Le fanke est corrupt enter eux, &c.  

[*] Apply is a man found to be attainted, arraigned, for that by his attainted of treason or felonie his blood is so finned and corrupted, as fitly, his children cannot be better to him, nor to any other ancestor, and therefore the warrantie cannot bide; for thereby heirs only are to be bound.

Secondly, if he were noble or gentle before, he and all his children and posterity are by

this statute made base and ignoble, in respect of any nobility or gentility which they had by their birth.

Thirdly, this corruption of blood is so high, that regularly it cannot be absolutely saved but by authority of parliament; which all which is implied in the statute (sec. 1).

Sect. 746.

ET EM, si tenant en taile fuit dif

fite, et puis fait relisie al d ifejor ove garrantie en fée, et puis le tenant en taile est attaunt, ou utage de felonie, et ad ifue et muror; en cæs efe le ifue en taile poit enter jur le d ifejor. Et la caufe est pour cor, que * rien fait discesistance en cæs efe forse le garrantie, et garrantie ne poit deten-

ner al ifue en taile, par cor, que le fanke est corrupt pretuer celer que fît le garr-

tantie et ifue en taile.

**Also, if tenant in taile bee diffeited, and after make a refer-

tion to the difeiter with warrantie in fee, and after the tenant in taile is attaint, or outlawed of felony, and hath ifue and dieth; in this case the ifue in taile may enter upon the difieiter. And the cause is for this, that nothing makest his dis-

continuance in this case but the warrantie, and warrantie may not defend to the ifue in taile, for this, that the blood is cor-

rupt between him that made the warrantie and the ifue in taile.

Sect.
CAR le garrancy
tous fôits demurt
t a le common ly, et
la common ley eft,
* eve quant borne eft
attain ou utlage de
felines, quel utлага-
vie eft un attain-
ter en ley, que le
fonde percerer ley et
fon lie, et tous au-
ters quexs ferre dis
fe beires, eft corrupt,
iffent que + ricus per
diffent pois diferenc-
d e afuen que pois
offre oit fes beires
per le common ley.
Et la fene de tel
bome que jifit : eft at-
tain de felines, ne
ferra jammers endeu
de les tenements sa
baron jifit attain.
Et la caufe eft, pur
seo que bornez plus
fercurent de faire
afus felines. † Mes
l'ifue en toye quant
a les tenements taites
n'eft pas en tiel cas
§ burre, purseo que []
est enherris per force
de le faiture, et ne-
my per le courfe de
common ley: et pur
cro tenattain de
fai pier ou de fon an-
cefior en le toyle []
ne lay onfer de fon
droit per force de le
tails, &c.

OF WARRANTEE.

Sect. 747.

FOR the warrantie
always abideth at
the common law, and
the common law is
such, when a man is
attaint or outlaw-
ed of felonie, which
outlawrie is an at-
tainde in law, that
the blood between
him and his fonne, and
all others which shall
bee faid his heires, is
corrupt, so that noth-
ing by diffent may
defend to any that
may bee faid his heire
by the common law.
And the wife of such
man that is so attain-
t, shall never be endow-
ed of the teemements
of her husband so attain-
ted. And the caufe is,
for that men should
more eschew to com-
mit felonies. But the
ifue in tail as to
the tenements tailed
is not in such case
cared, because he is
inhierible by force
of the statute, and not
by the course of
the common law: and
therefore such attai-
ter of his father or
of his anceflour in
the tail, shall not put
him out of his right
dy force of the tail,
&c.

† and added L. and M. and Robs.
§ burre not in L. and M. nee Robs
†† null added L. and M. and Robs.
Cap. 15. Of Warrantie. Sect. 748.

... first in his wife, that she shall lose her dower. Secondly, in his children, that they shall become base and ignoble; as hath been said. Thirdly, that he shall lose his posterity, for his blood is stained and corrupted, that they cannot inherit unto him or any other ancestor. Fourthly, that he shall forfeit all his lands and tenements which he hath in fee, and which he hath in tails, for terms of his life. And fifthly, all his goods and chattels. And thus seerere it is to commit felony: Of para ad passum, medicum ad omne percutient. And it is truly held, Exitum non admittere, tamquam placuis fons errores tuis. And so it is a forfeiture in case of high-treason. But some acts of parliament have altered the common law in some of these points: first, by the statute of demesne conditionall, lands intailed were not forfeited neither for felony nor for treason, but for the life of tenant in tail. This act was made by king Edward the first, who (as our books [2] speke) was the most fay gege king that ever was: [2] and the cause wherefore this statute was made, was to preserve the inheritance in the blood of them to whom the gift was made, a withdrawing any attainer of felonie or treason. And this act in history is called gentilicious municipal; for by that this the families of many noblemen and gentlemen were continued and preferred to their posterity. And this law continued in force from the thirteenth year of king Edward the first, until the [2] twenty-sixth year of king Henry the eighth, when by act of parliament estates in tail are forfeited by attainer of high-treason. But as to felonies (whereas our author here speaks) the statute of demesne conditionall doth yet remaine in force, so as if one tenant of dower, lands or tenements entailed are not forfeited, but only in case he be dead during the life of tenant in tail, but the inheritance is preferred to the issue.

In the case of a man attainted of high treason or petit treason shall not be received to dower, unless he be in certaine cases specially provided for. But the wife of a pret- attainted of mitrefaction of treason, murthor, or felony, is dowerable since our author wrote, [3] by the statute in that case made and provided, which is more favourable to the woman than the common law was: [3] If a seigniorie be granted with warrantie, and the tenantie echeant, the seigniorie whereunto the warrantie was annexed is extinct, and consequently the warrantie defeate, and it shall not extend to the land; et sic in similibus. If a collateral successor releafe with warrantie, and enter into religion, now the warrantie doth binds; but if after he be deigned, now it is defeate.

Sect. 748.

ITEM, if tenant en taile enoffe, his uncle, le quel enoffe un auteur en fee ou garrantie, &c. si a prepo, le ffeoffe per son fait relefia a son uncle, et toutes manieres dos garranties, ou toutes manieres de coovenants reall, ou toutes manieres de demandes, per tel releafe le garrantie est extinct. Et si le garrantie en cel case ffoit phade envers le heire en taile, que porta don briefe. Also, if tenant in taile inofree his uncle, which inoffes another in fee with warrantie, if after the ofree by his deed releafe to his uncle all manner of warrants, all manner of covenants reals, or all manner of demands, by such releafe the warrantie is extinct. And if the warrantie in this case bee plead against the heir in taile that bringeth his writ of forme-
Lib. 3. Of Warrantie. Sect. 748.

De formdon, par bar-<.


don, to barre the heire of his action, if the heire have and plead the said release, &c. he shall defeat the plee in barre, &c. And many other cases and matters there he, whereby a man may defeat a warrantie, &c.

release to one of the feoffors the warrantie, yet he shall vouch the other for the morie. And so it is if one introfe two with warrantie, and the one release the warrantie, yet the other shall vouch for his morie.

Si le heire a Vềit le dit release, &c. Here it appeareth, that the release being made to the uncle being his ancestor, the deed done after the decease of the uncle belong to him, and therefore he cannot plead it, unlese he beareth it forth.

Et multis autors ceyes et matters y font, per quexs bone post defeater warrantie, &c. As namely by a defance, as other things executorie may. Also a warrantie may lose his force by taking benefit of the same. In a proue the tenant vouched, and at the fequeur de perces, the tenant and the vouches make default, wherupon the demandant hath judgement against the tenant. And afterwards the demandant brings a seint facias against the tenant to have execution; in this case the tenant may have a warrantie coerue. And if in that case a stranger had brought a proue against the tenant, he might have vouched againe, for by the judgement given against the tenant, the warranty lost his force; but if the tenant had judgement to recover in value against the vouches, he should never vouch againe by reason of that warrantie, because he had taken advantage of the warrantie. And it is to be oberserved, that upon the process of fequest ad meunrie oman, if the seurite returne the vouches summonsed, and he make default, the tenant shall have a capialis ad velvaneo; but if he returne that the vouches had nothing, then after the first action or plea to a seint facias de perces shall issue; and should the vouches make default, the tenant shall not have judgement to recover in value, for he was never summonsed; and it appeareth of record that he hath nothing, but in the capialis ad velvaneo it appeareth that he had effect, and he had beene summonsed before; but in some special cases thereof, when the recoveries in value upon one warrantie. As if a disfier give lands to the houand and wife, and to the heires of the houand, the houand alience in fee with warrantie and deth, the wife bringeth a vouch in wid, the tenant vouch and recovereth in value, if after the death of the wife the disfier bring a proue against the alience, he shall vouch and recover in value againe.

Se it were where the wife bringeth a writ of dower against the alience, he shall recover in value, and after her death he shall recover in value againe, upon the same warrantie.

In the same manner as if a man be gifted of a rent by a defancefull title, and releaseth to the tenant of the land all his right in the land, and warranteth the land to him and his heires, if he be impeached for the land, he shall vouch and recover in value for the rent; and if after he be impeached for the land, he shall vouch and recover in value againe for the land: but in these and the like cases, the reason is in respect of the severall estates recovered, but for one and the same estate he shall never recover but once in value; and though the land recovered in value be evinced, yet shall he never take beneft of that warrantie after. And as warranties may be defaced in the whole, so they may be defaced as to the part of the benefit that may be taken of the same. As he that hath a warrantie may make a defance not to take any benefit by way of vouch; in the like manner that he shall take no advantage by way of warrantie coerue, or by way of rebutter.

* in dix relicos et suo plebibi et plongh diis relicos, &c. in L. and M.
HERE is Linstem, therefore, that in the same manner that a collateral warrantie may be defeted by matter in deed, or by matter in law, so may to all intents and purposes a lineall warrantie, whereas he putteth an example of a lineall warrantie and affets.

Et un lineal garantie, &c. voque ce que affets a ley dysfende, &c. Here it appeareth by Linstem, that a lineall warrantie and affirm is a good plea in a forsworn in the disfender; wherein it is to be known, that if to take in name alienet with warrantie, and leave affets to defend; if the affets in tale deed alienet the affets, and die, the affets of that affets shall recover the land, because the lineall warrantie defendeth only to him without affets: for neither the pleading of the warrantie without the affets, nor the affets without the warrantie is any barre, the forsworn in the disfender. But if the affets to whom the warrantie and affets defendeth had brought a forsworn, and by judgement had beene barred by reason of the warrantie and affets; in that case, albeit he alienet the affets, yet the estate tale is barred for ever; for a barre in a forsworn in the disfender, which is a wise in the highest nature that an affets in tale can have, is a good barre in any other forsworn in the disfender, brought afterwards upon the same gift.

A TOT, mon fitts, ORE jeo ay fitt a toy, mon fitts, trois litres.

AND it is to be underfoold, that in the same manner as the collateral warrantie may be defeted by matter in deed or in law; in the same manner may a lineall warrantie be defeted, &c. For if the heire in tale bringeth a writ of forsworn, and a lineall warrantie of his ancestor inheritable by force of the tale, bee pleaded against him, with that, this affets descendeth to him of fee simple, which he hath by the same ancestor that made the warrantie; if the heire that is demandant may adnul and defeat the warrantie, that sufficeth him: for the dictent of other tenements of fee simple maketh nothing to barre the heire without the warrantie, &c.

NOW I have made to thee, my sone, three books.
Le premier Livre est de Estates que bornes aunent en terres ou tenements : c'estavoir,

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Et ceux deux petits Livres joy fayt a teg par le meilur entendement de certaine Chapters de les antient Livre de Tenures.

And these two little Books I have made to thee for the better understanding of certaine Chapters of the antient Booke of Tenures.

Melior entendre, &c. And these Institutes have I collected and publified to the end that these three Books of our author may be the better understood of the industous reader.

Antient Livre des Tenures. This booke may well be accounted antient, for it was composed in the reign of King Edward the third, (as justice Fitzbertert faitheth) by a Sir in his Preface to his S. B.

Le Tiere Livre. ¶

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* en — L. and M. and Rob.
† † — L. and M. and Rob.
‡ ‡ — L. and M. and Rob.
§ ‡ — L. and M. and Rob.
¶ ‡ — L. and M. and Rob.
** ‡ — added L. and M. and Rob.
† † — De tenant per itzuge not in L. and M. and Rob.
‡ ‡ — Rentes in manus ac cure, in dict. cossigter, rent change, et rent selde, L. and M. and Rob.
** ‡ — added L. and M. and Rob.
† † The numbers of the Chapters as above are not enumerated either in L. and M. or Rob.
Epilogus.

De Parcencors folonque le coutume
De Joitnents
De Titants en common
De Efíates de terres et tenements fur condition
De Dijenent que telent enteries
De Continual Claime
De Rehajes
De Confimations
De Attenements
De Discontinuances
De Remiters
De Garranties.

Epilogus.

And know, my son, that I would not have thee believe, that all which I have said in these books is law, for I will not presume to take this upon me. But of those things that are not law, inquire and learn of my wife masters learned in the law. Notwithstanding albeit that certain things which are moved and specified in the said books are not altogether law, yet such things shall make thee more apt, and able to understand and apprehend the arguments and the reasons of the law, &c. For by the arguments and reasons in the law, a man more sooner shall come to the certain-

"De Parcencors folonque le coutume not in L. and M. nor Rob. &c. Here observe the great model of that art of our author, which is worthy of imitation: for Nula nosse, nulla facticia locum fuerit et dignitas conveniens post fuerit modis. And herein our author followed the example of Menia, who was a judge, and the first writer of law; for he was nosse viximum hominum qui jucund in terrena, at the holy historic tellith of him.

Les arguments et les raisons del ley, &c. Ratio et anima legis; for then are we said to know the law, when we apprehend the reason of the law; that is, when we bring the reason of the law so to our own reason, that we perfectly understand it as our own; and then, and never before, we have such an excellent and inexpressible property and ownership therein, as we can neither lose or part with, nor any man take it from us, and will direct us (the learning of the law is to chain together) in many other cases. But if by your studio and industry you make not the reason of the law your own, it is not possible for you to..."

"Es vanches, mon fils, que je ne vois que tu croies, que tout ce que je ne dis en les dits lieux soit fer, car je ne croy vois enprendre ne preumer ne moy. Mes de tiens choses que non pas ley, enquirir et apprendre de mes juges maistres appris en la ley. Nient moins comment que certaines choses que nous font noter et specifiees en les dits lieux, ne sont pas ley, ancore tiens choses ferre toy plus apt et able de entendre et apprendre les arguments et les raisons del ley, &c. Car per les arguments et les raisons en la ley, homme plus apt et able avriendra a le..."
Lex plus laudatur quando rationes probatur.

This is the fourth time that our author hath cited veriffs.
PREFACE

TO THE

TABLE.

To the READER.

COURTEOUS READER,

ALTHOUGH I have ever observed true, what our Honourable and grave Author intimates in the conclusion of this work, That Tables and Abridgements are most profitable to the makers, which indeed first gave life to my endeavours in this task, yet the confidence that they are not altogether unserviceable to others, together with the undeniable importunitie of some especiall friends, hath now wrested that to the publike view, what only was intended for private use. I hope the largeness of the Volume will apologize for the length of the Table, and its language speake somewhat in excuse of its prolixitie. And because of the smallnesse of the print, together with the much matter couched in every line, I have observed some notes or figures for your more speedie direction to what you are

* The Table to which this Preface was originally prefixed appears to have been first printed in 1629. It is here printed from the improved edition of it annexed to the 11th and 12th editions of this work.
are inquisitive. Divide each page with your eye into three parts, and where you meet with this note (+) it directeth to the upper part, this note (*) to the middle part, and this (¶) directeth you to the lower part of the page, so that you may easily at the first view finde what you desire, without the tedious reading over the whole page: and if you chance to misse what you seek for in the comment, the text will supply it unto you, or else the Printer shall be much to blame. Thus requesting you to weigh these my labours in the even balance of your indifferent judgement, I submit them to your confurse, and take my leave.

From the Inner Temple.

Prodeelle non obeisse.

Illud ex animo fiet, hoc prater voluntatem accidet.

A Table.
A TABLE OF THE HEADS CONTAINED IN THE FOLLOWING TABLE.

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ABATEMENT.

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