

5. Parsons, and Vicars; to whom there are generally requisite, holy Orders, Presentation, Institution, and Induction. 6. Curates. To which may be added, 7. Churchwardens. 8. Parish Clerks and Sextons.

C H A P. XIII.

Of the LAITY.

I.

THE LAITY are divisible into three States; CIVIL, MILITARY, and MARITIME.

2.

The CIVIL State (which includes all the Nation, except the Clergy, the Army, and the Navy; and many Individuals among them also;) may be divided into the NOBILITY, and the COMMONALTY.

3.

The NOBILITY are Dukes, Marquesses, Earls, Viscounts, and Barons. These had antiently Duties annexed to their respective Honours: They are created either by Writ, that is, by Summons to Parliament; or by the King's Letters patent, that is, by royal Grant: And they enjoy many Privileges, exclusive of their senatorial Capacity.

4.

The COMMONALTY consist of Knights of the Garter, Knights Bannerets, Baronets, Knights of
the

the Bath, Knights Bachelors, Esquires, Gentlemen, Yeomen, Tradesmen, Artificers, and Labourers.

5.

The MILITARY State, by the standing constitutional Law, consists of the Militia of each County, raised from among the People by Lot, officered by the principal Landholders, and commanded by the Lord Lieutenant.

6.

The more disciplined occasional Troops of the Kingdom are kept on foot only from Year to Year, by Parliament; and, during that Period, are governed by martial Law, or arbitrary Articles of War, formed at the Pleasure of the Crown.

7.

The MARITIME State consists of the Officers and Mariners of the BRITISH Navy; who are governed by express and permanent Laws, or the Articles of the Navy, established by Act of Parliament.

C H A P. XIV.

Of the PRIVATE RELATIONS of MASTER and SERVANT, and of HUSBAND and WIFE.

I.

THE PRIVATE, oeconomical, RELATIONS of Persons are those of, 1. MASTER and SERVANT. 2. HUSBAND and WIFE. 3. PARENT and CHILD. 4. GUARDIAN and WARD.

2.

The first Relation may subsist between a MASTER and four Species of SERVANTS; (for Slavery is unknown to our Laws:) viz. 1. Menial Servants; who are HIRED. 2. Apprentices; who are BOUND by Indentures. 3. Labourers; who are casually EMPLOYED. 4. Stewards, Bailiffs, and Factors; who are rather in a MINISTERIAL State.

3.

From this Relation result divers Powers to the Master, and Emoluments to the Servant.

4.

The Master hath a Property in the Service of his Servant; and must be answerable for such Acts as the Servant does by his express, or implied, Command.

5.

The second private Relation is that of MARRIAGE; which includes the reciprocal Rights and Duties of HUSBAND and WIFE.

6. MAR-

6.

MARRIAGE is duly contracted between Persons,
 1. Consenting: 2. Free from canonical Impedi-
 ments, which make it VOIDABLE: 3. Free also
 from the civil Impediments, — of prior Marriage;
 —of Want of Age; —of Non-Consent of Parents,
 &c., where requisite; — and of Want of Reason;
 either of which make it totally VOID. And it must
 be celebrated by a Clergyman, in due Form and
 Place.

7.

Marriage is dissolved, 1. By Death. 2. By Di-
 vorce in the spiritual Court; not *a Mensa & Toro*
 only, but *a Vinculo Matrimonii*, for canonical Cause
 existing previous to the Contract. 3. By Act of
 Parliament; as, for Adultery.

8.

By Marriage the Husband and Wife become one
 Person in Law; which Unity is the principal
 Foundation of their respective Rights, Duties, and
 Disabilities.

C H A P. XV.

Of the PRIVATE RELATIONS of PARENT and CHILD, and of GUARDIAN and WARD.

1.

THE third, and most universal, private Relation is that of PARENT and CHILD.

2.

CHILDREN are, 1. LEGITIMATE; being those who are born in lawful Wedlock, or within a competent time after. 2. BASTARDS, being those who are not so.

3.

The Duties of Parents to LEGITIMATE Children are, 1. Maintenance. 2. Protection. 3. Education.

4.

The Power of Parents consists principally in Correction, and Consent to Marriage. Both may after Death be delegated by Will to a Guardian; and the former also, living the Parent, to a Tutor or Master.

5.

The Duties of LEGITIMATE Children to Parents are Obedience, Protection, and Maintenance.

6.

The Duty of Parents to BASTARDS is only that of Maintenance.

7. The

7.

The Rights of a BASTARD are such only as he can acquire ; for he is incapable of inheriting any thing.

8.

The fourth private Relation is that of GUARDIAN and WARD, which is plainly derived from the last; these being, during the Continuance of their Relation, reciprocally subject to the same Rights and Duties.

9.

GUARDIANS are of divers Sorts : 1. Guardians by Nature, or the Parents. 2. Guardians for Nurture, assigned by the ecclesiastical Courts. 3. Guardians in Socage, assigned by the common Law. 4. Guardians by Statute, assigned by the Father's Will. All subject to the Superintendance of the Court of Chancery.

10.

FULL AGE in Male or Female for all Purposes is the Age of twenty one Years ; (different Ages being allowed for different Purposes ;) till which Age the Person is an INFANT.

11.

AN INFANT, in respect of his tender Years, hath various Privileges, and various Disabilities, in Law : Chiefly with regard to Suits, Crimes, Estates, and Contracts.

C H A P. XVI.

Of Bodies politic, or CORPORATIONS.

I.

BODIES politic, or CORPORATIONS, which are ARTIFICIAL Persons; are established for preserving in perpetual Succession certain Rights; which, being conferred on NATURAL Persons only, would fail in Process of Time.

2.

Corporations are, 1. AGGREGATE, consisting of many Members. 2. SOLE, consisting of one Person only.

3.

Corporations are also either SPIRITUAL, erected to perpetuate the Rights of the Church; or LAY. And the LAY are, 1. CIVIL; erected for many temporal Purposes. 2. ELEEMOSYNARY; erected to perpetuate the Charity of the Founder.

4.

Corporations are usually erected, and named, by virtue of the King's royal Charter.

5.

The Powers incident to all Corporations are, 1. To maintain perpetual Succession. 2. To act in their corporate Capacity like an Individual. 3. To hold Lands, subject to the Statutes of Mortmain. 4. To have a common Seal. 5. To make By-Laws.

Which

Which last Power, in spiritual, or eleemosynary Corporations, may be executed by the King or the Founder.

6.

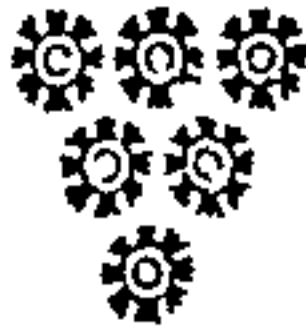
The Duty of Corporations is to answer the Ends of their Institution.

7.

To enforce this Duty, all Corporations may be VISITED: Spiritual Corporations by the Ordinary; Lay Corporations by the Founder, or his Representatives; viz. the civil by the King (who is the *Fundator incipiens* of all) represented in his Court of King's Bench; the eleemosynary by the Endower (who is the *Fundator perficiens* of such) or by his Heirs or Assigns.

8.

Corporations may be dissolved, 1. By Act of Parliament. 2. By the natural Death of all their Members. 3. By Surrender of their Franchises. 4. By Forfeiture of their Charter.



BOOK THE SECOND.

Of the RIGHTS of THINGS.

CHAPTER I.

*Of DOMINION over THINGS REAL; and, first
of CORPOREAL Hereditaments.*

I.

ALL DOMINION over external Objects has it's Original from the Gift of the Creator to Man in general.

2.

The SUBSTANCE of Things was, at first, common to all Mankind; yet a temporary Property, in the Use of them, might even then be acquired, and continued, by OCCUPANCY.

3.

In Proceſs of Time a permanent Property was eſtabliſhed in the SUBSTANCE, as well as the Use, of Things; which was alſo originally acquired by OCCUPANCY only.

4.

Leſt this Property ſhould determine by the Owner's Dereliſtion, or Death, whereby the Thing would again become common, Societies have eſta-
bliſhed

blished CONVEYANCES, WILLS, and HEIRSHIPS, in order to continue the Property of the first Occupant: And, where by Accident such Property becomes discontinued or unknown, the Thing usually results to the SOVEREIGN of the State, by virtue of the municipal Law.

5.

But of some Things, which are incapable of permanent substantial Dominion, there still subsists only the same transient usufructuary Property, which originally subsisted in all Things.

6.

In this PROPERTY, or exclusive Dominion, consist the RIGHTS of THINGS; which are, 1. Things REAL. 2. Things PERSONAL.

7.

In Things REAL may be considered, 1. Their several KINDS. 2. The TENURES, by which they may be holden. 3. The ESTATES, which may be acquired therein. 4. Their TITLE, or the Means of acquiring and losing them.

8.

All the several KINDS of Things real are reducible to one of these three, viz. LANDS, TENEMENTS, or HEREDITAMENTS; whereof the second includes the first, and the third includes the first and second.

9.

HEREDITAMENTS therefore, or whatever may come to be inherited, (being the most comprehensive

Denomination of Things real,) are either CORPORAL OR INCORPORAL.

10.

CORPORAL Hereditaments consist wholly of LANDS, in their largest legal Sense; wherein they include not only the Face of the Earth, but every other Object of Sense adjoining thereto, and subsisting either above or beneath it.

C H A P. II.

Of INCORPORAL Hereditaments.

1.

INCORPORAL Hereditaments are Rights issuing out of Things corporeal, or concerning, or annexed to, or exercisable within, the same.

2.

Incorporeal Hereditaments are, 1. ADVOWSONS. 2. TITHES. 3. COMMONS. 4. WAYS. 5. OFFICES. 6. DIGNITIES. 7. FRANCHISES. 8. CORODIES OR PENSIONS. 9. ANNUITIES. 10. RENTS.

3.

An ADVOWSON is a Right of Presentation to an ecclesiastical Benefice; either appendant, or in gross. This may be, 1. Presentative, 2. Collative. 3. Donative.

4.

TITHES are the tenth Part of the Increase yearly arising from the Profits and Stock of Lands, and
the

the personal Industry of Mankind. These, by the antient and positive Law of the Land, are due of common Right to the Parson or Vicar; unless specially discharged, 1. By real Composition. 2. By Prescription, either *de Modo decimandi*, or *de non decimando*.

5.

COMMON is a Profit which a Man hath in the Lands of another; being, 1. Common of Pasture; which is either appendant, appurtenant, because of Vicinage, or in gross. 2. Common of Piscary. 3. Common of Turbary. 4. Common of Estovers, or Botes.

6.

WAYS are a Right of passing over another Man's Ground.

7.

OFFICES are the Right to exercise a public, or private, Employment,

8.

FOR DIGNITIES, which are Titles of Honour, see Book I. Ch. 13.

9.

FRANCHISES are a royal Privilege, or Branch of the King's Prerogative, subsisting in the Hands of a Subject.

10.

CORODIES are Allotments for one's Sustenance; which may be converted into PENSIONS. (See Book I. Ch. 9.)

11.

AN ANNUITY is a yearly Sum of Money, charged upon the Person, and not upon the Lands, of the Grantor.

12.

RENTS are a certain Profit issuing yearly out of Lands and Tenements; and are reducible to, 1. Rent-service. 2. Rent-charge. 3. Rent-seck.

C H A P. III.

Of the ANTIEN T ENURES of Things real.

I.

THE Doctrine of TENURES is derived from the FEODAL LAW; which was planted in EUROPE by it's northern Conquerors, at the Dissolution of the ROMAN Empire.

2.

Pure and PROPER FEUDS were Parcels of Land, allotted by a Chief to his Followers; to be held on the Condition of personally rendering due military Service to their Lord.

3.

These were granted by Investiture; were held under the Bond of Fealty; were inheritable only by Descendants; and could not be transferred without the mutual Consent of the Lord and Vassal.

4. IM-

4.

IMPROPER FEUDS were derived from the other; but differed from them in their Original, their Services and Renders, their Descent, and other Circumstances.

5.

The Lands of ENGLAND were converted into FEUDS, of the improper Kind, soon after the NORMAN Conquest: Which gave Rise to the grand Maxim of Tenure; viz. That all Lands in the Kingdom are HOLDEN, mediately or immediately, of the King.

6.

The Distinction of Tenures consisted in the Nature of their Services: As, 1. CHIVALRY, or KNIGHT-SERVICE; where the Service was free, but uncertain. 2. FREE SOCAGE; where the Service was free, and certain. 3. Pure VILLENAGE; where the Service was base, and uncertain. 4. PRIVILEGED VILLENAGE, or VILLEIN SOCAGE; where the Service was base, but certain.

7.

The most universal antient Tenure was that in CHIVALRY, or by KNIGHT-SERVICE; in which the Tenant of every Knight's Fee was bound, if called upon, to attend his Lord to the Wars, This was granted by Livery, and perfected by Homage and Fealty; which usually drew after them Suit of Court.

8.

The other Fruits and Consequences of the Tenure by Knight-Service were, 1. Aid. 2. Relief. 3. Primer
mer

36 *An ANALYSIS of* BOOK II,
mer Seisin. 4. Wardship. 5. Marriage. 6. Es-
cheat. 7. Fines upon Alienation.

9.

GRAND SERJEANTY differed from Chivalry principally in it's Render, or Service; and not in it's Fruits and Consequences.

10.

The personal Service in Chivalry was at length gradually changed into pecuniary Assessments, which were called SCUTAGE or ESCUAGE.

11.

These military Tenures (except the Services of grand Serjeanty) were, at the Restoration of King CHARLES, totally abolished, and reduced to free Socage, by Act of Parliament,

CHAP. IV.

Of the MODERN TENURES of Things real.

1.

FREE SOCAGE is a Tenure by any free, certain, and determinate Service.

2.

This Tenure, the Relic of SAXON Liberty, includes PETIT SERJEANTY, Tenure in BURGAGE, and GAVELKIND.

3.

Free Socage Lands partake strongly of the feudal Nature, as well as those in Chivalry: Being holden ;

holden ; subject to some Service, — at the least, to Fealty and Suit of Court ; subject to Relief, to Wardship, and to Escheat, but not to Marriage ; subject also formerly to Aids, primer Seisin, and Fines for Alienation.

4.

PURE VILLENAGE was a precarious and slavish Tenure, at the absolute Will of the Lord, upon uncertain Services of the basest Nature.

5.

From hence, by tacit Consent or Encroachment, have arisen the modern COPYHOLDS, or Tenure by Copy of Court Roll ; in which Lands may be still held at the (nominal) Will of the Lord, (but regulated) according to the Custom of the Manor.

6.

These are subject, like Socage Lands, to Services, Relief, and Escheat ; and also to Heriots, Wardship, and Fines upon Descent and Alienation.

7.

PRIVILEGED VILLENAGE, or VILLEIN SOCAGE, is an exalted Species of copyhold Tenure, upon base, but certain, Services ; subsisting only in the antient Demesnes of the Crown ; whence the Tenure is denominated the Tenure in ANTIENT DEMESNE.

8.

These Copyholds, of antient Demesne, have divers Immunities annexed to their Tenure ; but are still held by Copy of Court Roll, according to the Custom of the Manor, though not at the Will of the Lord.

9. FRANK-

9.

FRANKALMOIGN is a Tenure by spiritual Services at large ; whereby many ecclesiastical and eleemosynary Corporations now hold their Lands and Tenements : Being of a Nature distinct from Tenure by divine Service in certain.

C H A P. V.

Of ESTATES, *with respect to their* QUANTITY of INTEREST ; *and, first, of* FREEHOLDS of INHERITANCE.

1.

ESTATES in Lands, Tenements, and Hereditaments, are such Interest as the Tenant hath therein ; to ascertain which, may be considered, 1. The QUANTITY of INTEREST. 2. The TIME of ENJOYMENT. 3. The NUMBER and CONNEXIONS of the TENANTS.

2.

Estates, with respect to their QUANTITY of INTEREST, or Duration, are either FREEHOLD, or LESS than FREEHOLD.

3.

A FREEHOLD Estate, in Lands, is such as is created by Livery of Seisin at common Law ; or, in Tenements of an incorporeal Nature, by what is equivalent thereto.

4. Free-

4.

Freehold Estates are either Estates of INHERITANCE, or NOT of INHERITANCE; viz for LIFE only: And INHERITANCES are, 1. ABSOLUTE, or FEE SIMPLE. 2. LIMITED FEES.

5.

Tenant in FEE SIMPLE is he that hath Lands, Tenements, or Hereditaments, to hold to him and his Heirs for ever.

6.

LIMITED FEES are, 1. QUALIFIED, or BASE, Fees. 2. Fees CONDITIONAL at the common Law.

7.

QUALIFIED, or BASE, Fees are those which, having a Qualification subjoined thereto, are liable to be defeated when that Qualification is at an end.

8.

CONDITIONAL Fees, at the common Law, were such as were granted to the Donee, and the Heirs of his Body, in exclusion of collateral Heirs.

9.

These were held to be Fees; granted on Condition that the Donee had Issue of his Body; which Condition being once performed by the Birth of Issue, the Donee might immediately aliene the Land: But, the Statute *de Donis* being made to prevent such Alienation, thereupon from the Division of the Fee (by Construction of this Statute) into a particular Estate and a Reversion, the conditional Fees began to be called Fees-TAIL.

10. All

10.

All Tenements real, or favouring of the Realty, are subject to Entails.

11.

Estates tail may be, 1. general, or special; 2. male, or female; 3. given in frank Marriage.

12.

Incident to Estates tail are, 1. Waste. 2. Dower. 3. Curtesy. 4. Bar; — by Fine, Recovery, or lineal Warranty with Affets.

13.

Estates tail are now, by many Statutes and Resolutions of the Courts, almost brought back to the State of conditional Fees at the common Law.

C H A P.

C H A P. VI.

Of FREEHOLDS, NOT *of* INHERITANCE.

I.

FREEHOLDS, NOT OF INHERITANCE, OR FOR LIFE only, are, 1. CONVENTIONAL, or created by the Act of the Parties. 2. LEGAL, or created by Operation of Law.

2.

CONVENTIONAL Estates for LIFE are created by an exprefs Grant for Term of one's own Life, or *pur auter Vie*; or by a general Grant, without expressing any Term at all.

3.

Incident to this, and all other Estates for Life, are Estovers, and Emblements: And to Estates *pur auter Vie* general Occupancy was also incident; as special Occupancy still is, if *cestuy que Vie* survives the Tenant.

4.

LEGAL Estates for LIFE are, 1. Tenancy in TAIL, after POSSIBILITY of Issue, EXTINCT. 2. Tenancy by the CURTESY of ENGLAND. 3. Tenancy in DOWER.

5.

Tenancy in TAIL, after POSSIBILITY of Issue EXTINCT, is where an Estate is given in special Tail; and, before Issue had, a Person dies from whose Body the Issue was to spring; whereupon the
Tenant

Tenant (if surviving) becomes Tenant in TAIL, after POSSIBILITY of Issue EXTINCT.

6.

This Estate partakes both of the Incidents to an Estate tail, and those of an Estate for Life.

7.

Tenancy by the CURTESY of ENGLAND is where a Man's Wife is seised of an Estate of Inheritance; and he by her has Issue, born alive, which was capable of inheriting her Estate; in which case he shall, upon her Death, hold the Tenements for his own Life, as Tenant by the CURTESY.

8.

Tenancy in DOWER is where a Woman's Husband is seised of an Estate of Inheritance, of which her Issue might by any Possibility have been Heir; and the Husband dies; the Woman is hereupon entitled to DOWER, or one third Part of the Lands and Tenements, to hold for her natural Life.

9.

Dower is either by the common Law; by special Custom; *ad Ostium Ecclesiae*; or, *ex Assensu Patris*.

10.

Dower may be forfeited, or barred; particularly by an Estate in JOINTURE.

C H A P. VII.

Of Estates, LESS than FREEHOLD.

1.

EStates LESS than FREEHOLD are, 1. Estates for YEARS. 2. Estates at WILL. 3. Estates at SUFFERANCE. 4. Estates on CONDITION.

2.

An Estate for YEARS is where a Man, seised of Lands and Tenements, letteth them to another for a certain Period of Time, which transfers the Interest of the Term; and the Lessee enters thereon, which gives him Possession of the Term, but not legal Seisin of the Land.

3.

Incident to this Estate are Estovers; and also Emblements, if it determines before the full End of the Term.

4.

An Estate at WILL is where Lands are let by one Man to another, to hold at the Will of both Parties; and the Lessee enters thereon.

5.

COPYHOLDS are Estates held at the Will of the Lord, (regulated) according to the Custom of the Manor.

6.

An Estate at SUFFERANCE is where one comes
into

into Possession of Land by lawful Title, but keeps it afterwards without any Title at all.

7.

Estates on CONDITION, (which may, or may not, be FREEHOLD) are; 1. On Condition IMPLIED: 2. On Condition EXPRESSED. 3. Estates in GAGE. 4. Estates by STATUTE, merchant or staple. 5. Estates by ELEGIT.

8.

Estates on Condition IMPLIED are where a Grant of an Estate has, from it's Essence and Constitution, a Condition inseparably annexed to it; though none be expressed in Words.

9.

Estates on Condition EXPRESSED are where an express Qualification or Provision is annexed to the Grant of an Estate: On the Breach or Nonperformance of which Conditions, either expressed or implied, the Estate so granted may be defeated.

10.

Estates in GAGE, *in Vadio*, or in Pledge, are Estates granted as a Security for Money lent; being 1. *In vivo Vadio*, or LIVING GAGE; where the Profits of Land are granted till a Debt be paid, upon which Payment the Grantor's Estate will revive. 2. *In mortuo Vadio*, in DEAD, or MORT GAGE; where an Estate is granted, on Condition to be void at a Day certain, if the Grantor then repays the Money borrowed; on Failure of which, the Estate becomes absolutely dead to the Grantor.

11. Estates

11.

Estates by STATUTE merchant, or STATUTE staple, are also Estates conveyed to Creditors, in pursuance of certain Statutes, till their Profits shall discharge the Debt.

12.

Estates by ELEGIT are where, in consequence of a judicial Writ so called, Lands are delivered by the Sheriff to a Plaintiff, till their Profits shall satisfy a Debt adjudged to be due by Law.

CHAP. VIII.

Of Estates, with respect to their TIME of ENJOYMENT.

1.

ESTATES, with respect to their TIME of ENJOYMENT, are either in immediate POSSESSION, or in EXPECTANCY: Which Estates in EXPECTANCY are created at the same Time, and are Parcel of the same Estates, as those upon which they are expectant. These are, 1. REMAINDERS. 2. REVERSIONS.

2.

A REMAINDER is an Estate limited to take Effect, and be enjoyed, after another PARTICULAR Estate in Possession is determined.

I

3. There-

3.

Therefore, 1. There must be a precedent particular Estate, in order to support a Remainder; 2. The Remainder must pass out of the Grantor, at the Creation of the particular Estate. 3. The Remainder must vest in the Grantee, during the Continuance, or at the Determination, of the particular Estate.

4.

Remainders are, 1. Vested; where the Estate is fixed to remain to a CERTAIN Person, after the particular Estate is spent. 2. Contingent; where the Estate is limited to take Effect, either to an UNCERTAIN Person, or upon an UNCERTAIN Event.

5.

AN EXECUTORY DEVISE is such a Disposition of Lands, by Will, that no Estate shall vest thereby at the Death of the Devisor, but only upon some future Contingency; without any precedent particular Estate to support it.

6.

A REVERSION is the Residue of an Estate left in the Grantor, to commence in Possession after the Determination of some PARTICULAR Estate granted: To which are incident Fealty, and Rent.

7.

Where two Estates, the one less, the other greater, the one in Possession, the other in Expectancy, meet together in one and the same Person, and in one and the same Right, the less is MERGED in the greater.

C H A P.

CHAP: IX.

*Of Estates, with respect to the NUMBER and
CONNEXIONS of the TENANTS.*

1.

EStates, with respect to the NUMBER and CON-
NEXIONS of their TENANTS, may be held,
1. In SEVERALTY. 2. In JOINTENANCY. 3. In
COPARCEINARY. 4. In COMMON.

2.

An Estate in SEVERALTY is where one Tenant holds it in his own sole-Right, without any other Person being joined with him.

3.

An Estate in JOINTENANCY is where an Estate is granted to two or more Persons; in which Case the Law construes them to be JOINTENANTS, unless the Words of the Grant expressly exclude such Construction.

4.

Jointenants have an Unity of Interest, of Title, of Time, and of Possession: They are seised *per my & per tout*; and therefore upon the Decease of one Jointenant, the whole Interest remains to the Survivor.

5.

Jointenancy may be dissolved, by destroying one of it's four constituent Unities.

I 2

6. An

6.

An Estate in COPARCENARY is where an Estate of Inheritance descends from the Ancestor to two or more Persons; who are called PARCENERS, and all together make but one Heir.

7.

Parceners have an Unity of Interest, Title, and Possession; but are only seised *per my*, and not *per tout*: Wherefore there is no Survivorship among Parceners.

8.

Incident to this Estate is the Law of HOTSPOT.

9.

Coparcenary may also be dissolved, by destroying any of it's three constituent Unities.

10.

An Estate in COMMON is where two or more Persons hold Lands, possibly by distinct Titles, and for distinct Interests; but by Unity of Possession, because none knoweth his own Severalty.

11.

Tenants in common have therefore an Unity of Possession, (without Survivorship; being seised *per my*, and not *per tout*;) but no necessary Unity of Title, Time, or Interest.

12.

This Estate may be created, 1. by dissolving the constituent Unities of the two former; 2. by express Limitation in a Grant: And may be destroyed, 1. by uniting the several Titles in one Tenant; 2. by Partition of the Land.

C H A P.

C H A P. X.

Of the TITLE to Things real, with the Means of acquiring and losing it ; and, first, of DESCENT.

1.

A TITLE to Things real is the Means whereby a Man cometh to the just Possession of his Property.

2.

Herein may be considered, 1. A mere or naked Possession. 2. The Right of Possession ; which is, 1st, an apparent, 2dly, an actual, Right. 3. The mere Right of Propriety. 4. The Conjunction of actual Possession with both these Rights ; which constitutes a perfect TITLE.

3.

The TITLE to Things real may be reciprocally acquired or lost, 1. By DESCENT. 2. By PURCHASE.

4.

DESCENT is the Means whereby a Man, on the Death of his Ancestor, acquires a Title to his Estate, in right of Representation, as his HEIR at Law.

5.

To understand the Doctrine of Descents, we must form a clear Notion of CONSANGUINITY ; which is the Connexion, or Relation, of Persons descended from the same Stock or common Ancestor ; and it

is, 1. LINEAL, where one of the Kinsmen is lineally descended from the other. 2. COLLATERAL, where they are lineally descended, not one from the other, but both from the same common Ancestor^a.

CHAP. XI.

Of the Rules of Descent, or legal CANONS of INHERITANCE.

THE Rules of Descent, or CANONS of INHERITANCE, observed by the Laws of ENGLAND, are these^b;

I.

Inheritances shall lineally DESCEND, to the ISSUE of the Person last actually seised, *in infinitum*; but shall never lineally ASCEND.

II.

The MALE Issue shall be admitted before the FEMALE.

III.

Where there are two or more Males in equal Degree, the ELDEST only shall inherit; but the Females ALL together.

IV.

The lineal Descendants, *in infinitum*, of any Person deceased shall REPRESENT their Ancestor; that is, stand in the same Place as the Person himself would have done, had he been living.

^a See APPENDIX, No. I.

^b See APPENDIX, No. II.

V.

On Failure of LINEAL Descendants, or Issue, of the Person last seized, the Inheritance shall descend to his next COLLATERAL Kindred; that is, the Issue lineally derived from his next immediate Ancestor; subject to the three last, and to the three succeeding Rules.

VI.

Such next collateral Kindred must be of the BLOOD of the FIRST PURCHASOR.—To evidence which, the two following Rules are established.

VII.

The collateral Heir of the Person last seized must be his next Kinsman, of the WHOLE Blood.

VIII.

In collateral Inheritances, the MALE STOCKS shall be preferred to the FEMALE; that is, Kinsmen descending from the Blood of the male Ancestors shall be admitted before those from the Blood of the female: Unless where the Lands did, in fact, descend from a Female.

C H A P. XII.

Of PURCHASE in general; and therein of OCCUPANCY, PRESCRIPTION, and ESCHEAT.

1.

PURCHASE, or Perquisition, is the Possession of an Estate, which a Man hath by his own Act or Agreement; and not by the mere Act of Law, or Descent from any of his Ancestors. This includes, 1. OCCUPANCY. 2. PRESCRIPTION. 3. ESCHEAT. 4. FORFEITURE. 5. BANKRUPTCY. 6. ALIENATION.

2.

OCCUPANCY is Taking the Possession of those Things, which before had no Owner.

3.

PRESCRIPTION is a personal immemorial Usage of enjoying a Right, by a Man, and either his Ancestors, or those whose Estate he hath; of which the first is called prescribing in his Ancestors, the latter in a *que Estate*.

4.

ESCHEAT is where, upon Deficiency of the Tenant's INHERITABLE BLOOD, the Estate falls to the Lord of the Fee.

5.

INHERITABLE BLOOD is wanting to, 1. Monsters. 2. Bastards. 3. The maternal Relations in paternal Inheritances, and *vice versa*. 4. Kindred of
the

the half Blood. 5. Aliens, and their Issue. 6. Persons attainted of Treason or Felony. 7. Papists, in respect of themselves only, by the statute Law.

C H A P. XIII.

Of FORFEITURE *and* BANKRUPTCY.

1.

FORFEITURE is a Punishment annexed by Law to some illegal Act, or Negligence, of the Owner of Things real; whereby the Estate is transferred to another, who is usually the Party injured.

2.

Forfeitures are occasioned, 1. By CRIMES. 2. By ALIENATION, contrary to Law. 3. By LAPSE. 4. By SIMONY. 5. By NONPERFORMANCE of CONDITIONS. 6. By WASTE.

3.

Forfeitures for CRIMES, or Misdemeanors, are for, 1. High Treason. 2. Misprision of Treason. 3. Petit Treason and Felony. 4. Outlawry. 5. Assaults on a Judge, and Batteries, sitting the Courts. 6. *Praemunire*. 7. Popish Recusancy, &c.

4.

ALIENATIONS, or Conveyances, which induce a Forfeiture, are, 1. Those in Mortmain, made to Corporations contrary to the statute Law. 2. Those made to Aliens. 3. Those made by particular Tenants, when larger than their Estates will warrant.

5. LAPSE

5.

LAPSE is a Forfeiture of the Right of Presentation to a vacant Church, by Neglect of the Patron to present within six calendar Months.

6.

SIMONY is the corrupt Presentation of any one to an ecclesiastical Benefice, whereby that Turn becomes forfeited to the Crown.

7.

For Forfeiture by NONPERFORMANCE of CONDITIONS, see Ch. 7.

8.

WASTE is a Spoil, or Destruction, in any corporeal Hereditaments, to the Prejudice of him that hath the Inheritance.

9.

COPYHOLD Estates may have also other Causes of Forfeiture, according to the Custom of the Manor,

10.

BANKRUPTCY is the Act of becoming a BANKRUPT; that is, a Trader who secretes himself, or does certain other Acts, tending to defraud his Creditors. (See Ch. 22.)

11.

By Bankruptcy all the Estates of the Bankrupt are transferred to the Assignees of his Commissioners, to be sold for the Benefit of his Creditors.

C H A P. XIV.

Of ALIENATION by COMMON ASSURANCES;
and the GENERAL NATURE of DEEDS.

I.

A LIENATION, Conveyance, or Purchase in it's more limited Sense, is a Means of transferring real Estates, wherein they are voluntarily resigned by one Man, and accepted by another.

2.

This formerly could not be done by a Tenant, without LICENCE from his Lord; nor by a Lord, without ATTORNMENT of his Tenant.

3.

All Persons are CAPABLE of purchasing; and all, that are in Possession of any Estates, are CAPABLE of conveying them: — Unless under peculiar Disabilities by Law.

4.

Alienations are made by COMMON ASSURANCES; which are, 1. By DEED, or Matter in *Pais*. 2. By Matter of RECORD. 3. By special CUSTOM. 4. By DEVISE.

5.

In Assurances by DEED may be considered, 1. It's GENERAL NATURE. 2. It's SEVERAL SPECIES.

6. A Deed,

6.

A Deed, in GENERAL, is the solemn Act of the Parties; being, usually, a Writing, sealed and delivered; and it may be, 1. A Deed indented, or Indenture. 2. A Deed poll.

7.

The REQUISITES of a Deed are, 1. SUFFICIENT PARTIES, and proper SUBJECT-MATTER. 2. A good and sufficient CONSIDERATION. 3. WRITING on Paper, or Parchment, duly stamped. 4. Legal and orderly PARTS^c, (which are usually, 1st, the Premises; 2dly, the *Habendum*; 3dly, the *Tenendum*; 4thly, the *Reddendum*; 5thly, the Conditions; 6thly, the Warranty; 7thly, the Covenants; 8thly, the Conclusion, which includes the Date.) 5. READING it, if desired. 6. SEALING, and, in many cases, SIGNING it also. 7. DELIVERY, 8. ATTESTATION.

8.

A Deed may be AVOIDED, 1. By the Want of any of the Requisites before-mentioned. 2. By subsequent Matter; as, 1st, Rasure, or Alteration. 2dly, Defacing it's Seal. 3dly, Cancelling it. 4thly, Disagreement of those, whose Consent is necessary. 5thly, Judgment of a Court of Justice.

^c See APPENDIX, No. III. and No. IV.

CHAP XV.

Of the SEVERAL SPECIES *of* DEEDS.

OF Deeds, some serve to CONVEY real Property, some only to CHARGE and DISCHARGE it.

2.

Deeds which serve to CONVEY real Property, or CONVEYANCES, are either by COMMON LAW, or by STATUTE. And, of Conveyances by COMMON LAW, some are ORIGINAL or primary, others DERIVATIVE or secondary.

3.

ORIGINAL Conveyances are, 1. FEOFFMENTS. 2. GIFTS. 3. GRANTS. 4. LEASES. 5. EXCHANGES. 6. PARTITIONS. — DERIVATIVE are, 7. RELEASES. 8. CONFIRMATIONS. 9. SURRENDERS. 10. ASSIGNMENTS. 11. REVOCATIONS.

4.

A FEOFFMENT^d is the Transfer of any CORPOREAL Hereditament to another, perfected by LIVERY of SEISIN, or Delivery of bodily Possession from the Feoffor to the Feoffee; without which no freehold Estate therein can be created at common Law.

5.

A GIFT is properly the Conveyance of Lands in Tail.

^d See APPENDIX, No. III.

6. A GRANT

6.

A GRANT is the regular Method; by common Law, of conveying INCORPORAŁ Hereditaments.

7.

A LEASE is the Demise, Granting, or Letting to Farm of any Tenement, usually for a less Term than the Lessor hath therein; yet sometimes possibly for a greater; according to the Regulations of the restraining and enabling Statutes.

8.

AN EXCHANGE is the mutual Conveyance of equal Interests; the one in Consideration of the other.

9.

A PARTITION is the Division of an Estate held in Jointenancy, in Coparcenary, or in common, between the respective Tenants; so that each may hold his distinct Part in Severalty.

10.

A RELEASE is the Discharge or Conveyance of a Man's Right, in Lands and Tenements, to another that hath some former Estate in Possession therein.

11.

A CONFIRMATION is the Conveyance of an Estate or Right *in esse*, whereby a voidable Estate is made sure, or a particular Estate is increased.

12.

A SURRENDER is the Yielding up of an Estate for Life, or Years, to him that hath the immediate Remainder or Reversion; wherein the particular Estate may merge.

13. An

13.

An ASSIGNMENT is the Transfer, or Making over to another, of the whole Right one has in any Estate; but usually in a Lease, for Life or Years.

14.

A REVOCATION is the Execution of a Power, reserved by the Grantor in a former Deed, of calling back the Estate granted. It differs from a DEFEASANCE in that the Deed of DEFEASANCE must be of the same Antiquity as the Grant, and that the Deed of REVOCATION may be subsequent.

15.

Conveyances by STATUTE depend much on the Doctrine of USES and TRUSTS: Which are a Confidence reposed in the *Terre-Tenant*, or Tenant of the Land, that he shall permit the Profits to be enjoyed, according to the Directions of *cestuy que Use*, or *cestuy que Trust*.

16.

The Statute of Uses, having transferred all Uses into actual Possession, (or, rather, having drawn the Possession to the Use) has given Birth to three other Species of Conveyance: 1. A COVENANT to stand seized to USES. 2. A BARGAIN and SALE, enrolled. 3. A LEASE and RELEASE^e. Which owe their present Operation principally to the Statute of Uses.

^e See APPENDIX, No. IV.

17.

Deeds which do not CONVEY, but only CHARGE real Property, and DISCHARGE it, are, 1. OBLIGATIONS^f. 2. RECOGNIZANCES. 3. DEFEASANCES.

CHAP. XVI.

Of ASSURANCES by Matter of RECORD.

I.

ASSURANCES by Matter of RECORD are where the Sanction of some Court of Record is called in, to substantiate and witness the Transfer of real Property. These are, 1. PRIVATE ACTS of PARLIAMENT. 2. The KING'S GRANTS. 3. FINES. 4. Common RECOVERIES.

2.

PRIVATE ACTS of PARLIAMENT are a Species of Assurances, calculated to give (by the transcendent Authority of Parliament) such reasonable Powers or Relief, as are beyond the Reach of the ordinary Course of Law.

3.

The KING'S GRANTS, contained in Charters or Letters patent, are all entered on Record, for the Dignity of the royal Person, and Security of the royal Revenue.

f See APPENDIX, No. V.

4. A FINE

4.

A FINE^s (sometimes said to be a Feoffment of Record) is an amicable Composition and Agreement of an actual, or fictitious, Suit; whereby the Estate in question is acknowledged to be the Right of one of the Parties.

5.

The PARTS of a Fine are, 1. The Writ of Covenant. 2. The Licence to agree. 3. The Concord. 4. The Note. 5. The Foot. To which the Statute hath added, 6. Proclamations.

6.

Fines are of four KINDS: 1. *Sur Cognizance de Droit, come ceo que il ad de son Done.* 2. *Sur Cognizance de Droit tantum.* 3. *Sur Concessit.* 4. *Sur Done, Grant, et Render*; which is a double Fine.

7.

The FORCE and EFFECT of Fines (when levied by such as have themselves any Interest in the Estate) are to assure the Lands in question to the Cognizee, by barring the respective Rights of Parties, Privies, and Strangers.

8.

A common RECOVERY^h is by an actual, or fictitious, Suit or Action for Land, brought against the Tenant of the Freehold; who thereupon vouches another, who undertakes to warrant the Tenant's Title: But, upon such Vouchee's making Default, the Land is RECOVERED by Judgment at Law against the Tenant; who, in return, obtains Judgment against

^g See APPENDIX, No. VI:

^h See APPENDIX, No. VII:

the Vouchee to recover Lands of equal Value in Recompense.

9.

The FORCE and EFFECT of a Recovery are to assure Lands to the Recoveror, by barring Estates tail, and all Remainders and Reversions expectant thereon; provided the Tenant in Tail either suffers, or is vouched in, such Recovery.

10.

The USES of a Fine or Recovery may be directed by, 1. Deeds to LEAD such Uses; which are made previous to the Levying or Suffering them. 2. Deeds to DECLARE the Uses; which are made subsequent.

C H A P. XVII.

Of ASSURANCES by special CUSTOM, and DEVISE.

1.

ASSURANCES by special CUSTOM are confined to the Transfer of COPYHOLD Estates.

2.

This is effected by, 1. SURRENDER by the Tenant into the Hands of the Lord to the Use of another, according to the Custom of the Manor. 2. PRESENTMENT, by the Tenants or Homage, of such Surrender. 3. ADMITTANCE of the Surrenderee

deree by the Lord, according to the Uses expressed in such Surrender.

3.

ADMITTANCE may also be had upon original GRANTS to the Tenant from the Lord, and upon DESCENTS to the Heir from the Ancestor.

4.

DEVISE is a Disposition of Lands and Tenements, contained in the last Will and Testament of the Owner.

5.

This was not permitted by the common Law, as it stood since the Conquest; but was introduced by the statute Law.

CHAP. XVIII.

Of THINGS PERSONAL, or CHATTELS; their DISTRIBUTION; and the PROPERTY which may be had therein.

1.

THINGS PERSONAL are comprehended under the general Name of CHATTELS; which include whatever wants either the Duration, or the Immobility, attending Things real.

2.

In these are to be considered, 1. Their DISTRIBUTION. 2. The PROPERTY of them. 3. The TITLE to that Property.

K 2

3. As

3.

As to the DISTRIBUTION of Chattels, they are,
1. Chattels REAL. 2. Chattels PERSONAL.

4.

Chattels REAL are such Quantities of Interest, in Things IMMOVEABLE, as are short of the Duration of Freeholds; being limited to a Time certain, beyond which they cannot subsist. (See Ch. 7.)

5.

Chattels PERSONAL are Things MOVEABLE; which may be transferred from Place to Place, together with the Person of the Owner.

6.

PROPERTY, in Chattels personal, is either in POSSESSION, or in ACTION.

7.

Property in POSSESSION, where a Man has the actual Enjoyment of the Thing, is, 1. ABSOLUTE. 2. QUALIFIED.

8.

ABSOLUTE Property is where a Man has such an exclusive Right in the Thing, that it cannot cease to be his, without his own Act or Default.

9.

QUALIFIED Property is such as is not, in it's Nature, permanent; but may sometimes subsist, and at other times not subsist.

10.

This may arise, 1. Where the Subject is incapable of absolute Ownership. 2. From the peculiar Circumstances of the Owners.

11. Pro-

11.

Property in ACTION, is where a Man hath not the actual OCCUPATION of the Thing; but only a RIGHT to it, arising upon some Contract, and recoverable by an Action at Law.

12.

The Property of Chattels personal is liable to Remainders, if created by Will; to Jointenancy; and to Tenancy in common.

C H A P. XIX.

Of the TITLE to Things personal, or Chattels, by OCCUPANCY, PREROGATIVE, and SUCCESSION.

I.

THE TITLE to Things personal may be acquired or lost by, 1. OCCUPANCY. 2. PREROGATIVE. 3. SUCCESSION. 4. CUSTOM. 5. MARRIAGE. 6. FORFEITURE. 7. JUDGMENT. 8. GRANT. 9. CONTRACT. 10. BANKRUPTCY. 11. TESTAMENT. 12. ADMINISTRATION.

2.

OCCUPANCY still gives the first Occupant a Right to those few Things, which have no legal Owner, or which are incapable of permanent Ownership.

3.

By PREROGATIVE is vested in the Crown, or it's Grantees, the Property of the royal Revenue; (See Book I. Ch. 9, 10.) and also the Property of all

Game in the Kingdom, with the Right of pursuing and taking it.

4.

By SUCCESSION the Right of Chattels is also vested in Corporations AGGREGATE; and likewise in such SOLE Corporations, as are the Heads and Representatives of Bodies aggregate.

CHAP. XX.

Of CUSTOM, MARRIAGE, FORFEITURE, and JUDGMENT.

1.

BY CUSTOM, obtaining in particular Places, a Right may be acquired in Chattels: The most usual of which Customs are those relating to, 1. HERIOTS. 2. MORTUARIES. 3. HEIR-LOOMS.

2.

HERIOTS are either Heriot-SERVICE, which differs little from a Rent; or Heriot-CUSTOM, which is a customary Tribute, of Goods and Chattels, payable to the Lord of the Fee on the Decease of the Owner of Lands.

3.

MORTUARIES are a customary Gift, due to the Minister in many Parishes, on the Death of his Parishioners.

4. HEIR-

4.

HEIR-LOOMS are such personal Chattels, as descend by special Custom to the Heir, along with the Inheritance of his Ancestor.

5.

By MARRIAGE the Chattels personal of the Wife are vested in the Husband, in the same Degree of Property, and with the same Powers, as the Wife when sole had over them; provided he reduces them to Possession.

6.

The Wife also acquires, by MARRIAGE, a Property in her *Paraphernalia*.

7.

By FORFEITURE, for Crimes and Misdemeanors, the Rights of Goods and Chattels may be transferred from one Man to another; either in part, or totally.

8.

Total Forfeitures of Goods arise from, 1. Treason, and Misprision thereof. 2. Felony. 3. Excusable Homicide. 4. Outlawry. 5. Flight. 6. Standing mute. 7. Atrocious Contempts. 8. *Praemunire*. 9. Pretended Prophecies. 10. Owling. 11. Residing abroad of Artificers. 12. Challenges to fight for Debts at Play.

9.

By JUDGMENT, consequent on a Suit at Law, a Man may, in some cases, not only RECOVER, but originally ACQUIRE, a Right to personal Property.

C H A P. XXI.

Of GRANTS and CONTRACTS.

1.

A GRANT, or GIFT, is a voluntary Conveyance of a Chattel personal in Possession, without any Consideration or Equivalent.

2.

A CONTRACT is an Agreement, upon sufficient Consideration, to do or not to do a particular Thing: And, by such Contract, any personal Property (either in Possession, or in Action) may be transferred.

3.

Contracts may be either express, or implied; — either executed, or executory.

4.

The CONSIDERATION of Contracts is, 1. A good Consideration. 2. A valuable Consideration.

5.

The most usual SPECIES of personal Contracts are, 1. SALE or EXCHANGE. 2. BAILMENT. 3. HIRING or BORROWING. 4. DEBT.

6.

SALE or EXCHANGE is a Transmutation of Property from one Man to another, in Consideration of some Recompense in Value.

7.

BAILMENT is the Delivery of Goods in Trust; upon a Contract, express or implied, that the Trust shall be faithfully performed by the Bailee.

8. HIRING

8.

HIRING or BORROWING is a Contract, whereby the Possession of Chattels is transferred for a particular Time, on Condition that the identical Goods (or, sometimes, their Value) be restored at the Time appointed; together with (in case of HIRING) a Stipend or Price for the Use.

9.

This Price, being calculated to answer the Hazard, as well as Inconvenience, of Lending, gives Birth to the Doctrine of INTEREST, or USURY, upon Loans; and, consequently, to the Doctrine of INSURANCE.

10.

DEBT is any Contract, whereby MONEY becomes due to the Creditor. This is, 1. A Debt of RECORD. 2. A Debt upon SPECIAL Contract. 3. A Debt upon SIMPLE Contract; which last includes Paper Credit, or Bills of Exchange, and promissory Notes.

CHAP. XXII.

Of BANKRUPTCY.

1.

BANKRUPTCY (as defined in Ch. 13.) is the Act of becoming a Bankrupt.

2.

Herein may be considered. 1. Who may become a Bankrupt. 2. The Acts, whereby he may become
come

come a Bankrupt, 3. The PROCEEDINGS on a Commission of Bankrupt, 4. How his PROPERTY is transferred thereby.

3.

Persons, of full Age, USING the TRADE of Merchandize, by buying, and selling, and seeking their Livelyhood thereby, are liable to become Bankrupts; for Debts of a sufficient Amount.

4.

A Trader, who endeavours to avoid his Creditors, or evade their just Demands, by any of the Ways specified in the several Statutes of Bankruptcy, doth thereby commit an ACT of Bankruptcy.

5.

The PROCEEDINGS on a Commission of Bankrupt, so far as they affect the Bankrupt himself, are principally by, 1. Petition. 2. Commission. 3. Declaration of Bankruptcy. 4. Choice of Assignees. 5. The Bankrupt's Surrender. 6. His Examination. 7. His Discovery. 8. His Certificate. 9. His Allowance. 10. His Indemnity.

6.

The PROPERTY of a Bankrupt's personal Estate is, immediately upon the Act of Bankruptcy, vested by Construction of Law in the Assignees: And they, when they have collected, distribute the whole by equal Dividends among all the Creditors.

C H A P. XXIII.

Of TESTAMENT, *and* ADMINISTRATION.

I.

CONCERNING TESTAMENTS and ADMINISTRATIONS, considered jointly, are to be observed, 1. Their ORIGINAL and ANTIQUITY. 2. WHO may make a Testament. 3. It's NATURE and INCIDENTS. 4. What are EXECUTORS and ADMINISTRATORS. 5. Their OFFICE and DUTY.

2.

TESTAMENTS have subsisted in ENGLAND immemorially; whereby the Deceased was at Liberty to dispose of his personal Estate, reserving antiently to his Wife and Children their REASONABLE PART of his Effects.

3.

The Goods of INTESATES belonged antiently to the King; who granted them to the Prelates to be disposed in pious Uses: But, on their Abuse of this Trust in the times of Popery, the Legislature compelled them to delegate their Power to ADMINISTRATORS expressly provided by Law.

4.

ALL Persons may make a Testament, unless disabled by, 1. Want of Discretion. 2. Want of Freewill. 3. Criminal Conduct.

5. TESTA-