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MEs il appiert per les plées & arguments faits en bon plee sur briefe de Detinue de un escript Obligatorie per un H. Gray T. 7 E. 3. que ne beseigne a celuy q̄ tient per escuage de aler ove le Roy luy mesm̄, voile trover un auter person able pur convenablement ray pur le guerre aler ove le Roy. Et ceo semble estre reason, car poit estre q̄ celuy que tient per tiels services est enguishant, issint q̄ ne poit aler ne chivacher. Et aust un abbe, ou auter home de Religion, ou feme sole q̄ tient per tiels services, ne doit en tiel cas aler en proper person. Et Sir W. Herle, adonque chiefe Justice de common Bank disoit en tiel plee, que escuage ne sera graunt, mes ou le Roy alast luy mesme en son proper person. Et fuist demurre en Judgment si mesme le plee, ie quel les xl. jours serront accompts de le primer jour del mu-

BUT it appeareth by the pleas and arguments made in a plea upon a Writ of detinue of a writing Obligatorie brought by one *H.Gray*, *T. 7 E.* 3. that it is not needful for him which holdeth by Escusage to go himself with the King if he will find another able person for him conveniently arrayed for the War to go with the King. And this seemeth to be good reason. For it may be that he which holdeth by such services is languishing, so as he can neither go nor ride. And also an Abbot or other man of Religion, or a feme sole, which hold by such Services ought not in such case to go in proper person. And Sir *William Herle* then Chief Justice of the Common Place said in this plea, that Escusage shall not be granted but where the King goes himself in his proper person. And it was demurred in judgment in the same plea, whether the 40 days should be accounted from the first day of

¶ TR. 7 E.3. &c. This is the first book at large that our Author hath cited, and it is to be observed that this point is not debated in the said book, but only it is there admitted, & yet is good authority in law, for our Author saith that it appeareth by this book, now both by Littleton himself, and by the book of 7 E. 3. it is apparent that albeit the tenure is that he which holdeth by a whole Knights fee, ought to be with the King &c. to do a corporal service, yet he may find another able man to do it for him. T. 7 E.3. fol.25.

By the Stat. of Magna Charta, cap. 20. it is provided, that no Knight that holdeth by Castle-gard shall be distreined to give money for the keeping of the Castle, Si ipse eam facere voluere in propria persona sua vel per alium probum hominem faciet si ipse eam facere non possit propter rationabilem causam. ‡ F.N.B.174. c. 175. a. ‡ 4 Co. 88.

Some have thought that he that holds by escusage is taken by the equity of this statute that speaketh only of Castle-gard, but it is holden that this stat. is but an affirmance of the common law. For where that act saith, (propter rationabilem causam) that reasonable cause is referred to the Tenants own discretion & choice, and the cause is not material or issuable no more than in the case that Littleton here putteth as hereafter appeareth. And I would advise our student, that when he shall be enabled & armed to set upon the year books or reports of law, that he be furnished with all the whole course of the Law that when he heareth a case vouched and applyed either in West-minster-hall (where it is necessary for him to be a diligent hearer, & observer of cases of law) or at readings or other exercises of learning; he may find out and read the case so vouched, for that will both fasten ‡ 6 Co. 20. ‡ F.N.B. 271. d.

faſten it in his memory, and be to him as good as an expoſition of that caſe, but that muſt not hinder his timely and orderly reading, which (all excuſes ſet apart) he muſt bind himſelf unto, for there be two things to be avoided by him, as enemies to learning, præpoſtera lectio, and præpropera praxis. But let us now hear what our Author will ſay.

ſter de host le Roy, fait per les Commons, & per commandement le Roy, ou de la iour que le Roy primes entra en Escoce: Ideo Quære de hoc.

the Muſter of the Kings hoſt made by the Commons, and by the Commandment of the King, or from the day that the King firſt entred into *Scotland*. Therefore inquire of this.

¶ *Et ceo ſemble bone reaſon, &c.* Here Littleton ſheweth three reaſons wherefore the Tenant ſhould not be conſtrained to do his ſervice in perſon.

First, It may be the tenant is ſick, ſo as he is neither able to go nor ride. And ever ſuch
‡ Cro.Eliz.506. ‡ Ante 59. ‡ 2 Rolls 518. conſtruction muſt be made in matters concerning the defence of the Realm or common good, as the ſame may be effected and performed. To the former diſability may be added where the Corporation aggregate of many, as Dean and Chapter, Major and Commonalty, &c. or an Infant being a Purchaſer, for theſe alſo muſt find an able man. But it may be objected that in theſe particular Caſes the Tenant might find a man, but not when he himſelf is able without all excuſe or impediment. To this it is anſwered, that Sapiens incipit à fine. And the end of this ſervice is for defence of the Realm, and ſo it be done by an able and ſufficient man, the end is effected.

Secondly, Seeing there are ſo many juſt excuſes of the Tenant, it were dangerous, attending to the hinderance of the ſervice, if theſe excuſes ſhould be iſſuable, Multa in jure communi contra rationem diſputandi pro communi utilitate introducta ſunt.

Laſtly, both Littleton and the book in the ſeventh of Edward the Third, giveth the Tenant power, without any cauſe to be ſhewed to find an able and ſufficient man, and oftentimes Jura publica ex privato promiſcue decidi non debent.

‡ 8 Co. 102. ‡ Poſt. 99. a. ‡ F.N.B 174. c. ‡ 2 Co. 44 b. ‡ Poſt. 159. ¶ *Un Abbe ou auter home de religion.* Note that if the King had given Lands to an Abbot and his Succeſſors to hold by Knights ſervice, this had been good and the Abbot ſhould do homage and find a man, &c. or pay Eſcuage, but there was no wardſhip or relief or other incident belonging thereunto. And though the Law ſaith that this was Mortmain, that is, they held faſt their Inheritance, yet if the Abbot with the aſſent of his Covent, had conveyed the land to a natural man and his heirs, now wardſhip and Relief and other incidents belonged of common right to the tenure. And ſo it is, if the King give lands to a Major and Commonalty, and their Succeſſors to be holden by Knights Service. In this caſe the Patentees (as hath been ſaid) ſhall do no homage, neither ſhall there be any wardſhip or Relief, only they alſo ſhall find a man, &c. or pay Eſcuage. But if they convey over the Lands to any natural man and his heirs, now homage, ward, mariage and relief, and other incidents belonging thereunto is due. And yet this poſſibility was remota potentia, but the reaſon hereof is, Ceſſante ratione legis ceſſat ipſa lex, the reaſon of the immunity was in reſpect of the body politick, which by the conveyance ever ceaſeth, which is worthy of obſervation.

And it is to be obſerved, that every Biſhop in England hath a Barony, and that Barony is holden of the King in Capite, and yet the King can neither have wardſhip or Relief.

6 H.3. avowry 242. F.N.B. 83. 84. If two Joyntenants be of Land holden by Knights ſervice, if one goeth with the King, it ſufficeth for both, and both of them cannot be compelled to go, for by their tenure one man is only to go.

If the Tenant peravail goeth, it diſchargeth the Meſne, for one Tenancy ſhall pay but one Eſcuage.

¶ *Ou auter home de Religion.* Here this word (Religion) is taken largely, viz. not only for regular, or dead Perſons, Abbots, Monks or the like; but for ſecular perſons alſo, as Biſhops, Parſons, Vicars, and the like, for neither of them are bound to go in proper perſon. For Nemo militans Deo implicet' ſecularibus negotiis.

¶ *Languiſhant.* So it may be ſaid of an Ideot, a mad Man, a Leper, a man maimed, blind, deaf, of decrepit age, or the like.

¶ *Ou feme ſole.* Seeing that a feme ſole, that cannot perform Knights ſervice may ſerve by deputy, it may be demanded wherefore an heir male being within the age of 21 years

s may not ſerve alſo by Deputy, being not able to ſerve himſelf,
o this it is anſwered, that in caſes of Minority, all is one to both ſexes, viz. if the heir
be at the death of the Anceſtor under the age of twenty, or the heir female under the age ‡ 2 Co. 91.
4. they can make no deputy, but the lord ſhall have wardſhip as an incident to the tenure:
efore Littleton is here to be underſtood of a feme ſole of full age, and ſeiſed of land holden
nights ſervice either by purchaſe or deſcent.

¶ *Covenablement arraie pur le guerre.* So as here are four things to be ob= ‡ 4 Inſt. 192.
d.
irſt, (as hath been ſaid) that he may find another.
econdly, That he that is found muſt be an able perſon.
hirdly, he muſt be armed at the coſts and charge of the tenant, and herein is to be noted, ‡ Poſt. 208.
d non definitur in jure, with what manner of Armor the ſouldier ſhall be arrayed with,
ime, place, and occaſion do alter the manner and kind of the Armor.
ourthly, he muſt have ſuch Armor, as ſhall be neceſſary, and ſo appointed in readineſs.
erdwic is a Saxon word, & ſignificat quietanciam murdri in exercitu. Worlcott is an old En- Fleta lib.1.cap.42.
word and ſignifieth Liberum eſſe de oneribus armorum.
t is truly ſaid, Quod miles hæc tria curare debet, corpus ut validiſſimum & perniciſſimum Livius.
at, arma apta ad ſubita imperia, cætera Deo, & Imperatori curæ eſſe.
piens non ſemper it uno gradu, ſed una via, non ſe mutat ſed aptat. Qui ſecundos optat e- Vegetius.
us, dimicet arte non caſu. In omni conflictu non tam prodeſt multitudo quam virtus.
t optimi ducis ſcire & vincere, & cedere prudenter tempori. Multum poteſt in rebus humanis Polibius.
ſio, plurimum in bellicis.
uid tam neceſſarium eſt quam tenere ſemper arma quibus tectus eſſe poſſis. But I will take Vegetius.
eave of theſe excellent Authors of Art Military, and refer them to thoſe that profeſs the
, and will return to Littleton.

¶ *Muſter.* I find this word in the ſtatute of 18 H.6.cap.19. and the ancient Military ‡ 11 Co. 8. 9.
er is worthy of obſervation, for before and long after that ſtatute, when the King was to be
d with ſouldiers for his war, a Knight or Eſquire of the County, that had Revenues,
mers and Tenants would covenant with the King by Indenture inrolled in the Exche=
to ſerve the King for ſuch a term with ſo many men (ſpecially named in a liſt) in his war,
an excellent inſtitution that they ſhould ſerve under him whom they knew and honoured,
with whom they muſt live at their return, theſe men being muſtered before the Kings
mmiſſioners, and receiving any part of their wages, and their names ſo recorded, if they af-
parted from their Captain within the term, contrary to the form of that ſtatute, it was ‡ 7 Co. 9.
y. But now that ſtatute is of no force, becauſe that ancient and excellent form of Military ‡ 1 Cro. 71.
e is altogether antiquated: but later ſtatutes have provided for that miſchief. Lib.6.fol. 27. the ſoul-
o muſter is to make a ſhew of Souldiers well armed and trained before the Kings Com= diers caſe.
ioners in ſome open field, Ubi ſe oſtendentes præludunt prælio. In Latine it is cenſere, ſeu ‡ 3 Inſt. 86.
are exercitum.
y the law before the conqueſt Muſters and ſhewing of Armor ſhould be Uno eodem die per Lamb.fol. 135. b.
erſum regnum, ne aliqui poſſint arma familiaria ribus & notis accommodare, nec ipſi illa mutuo
bere, ac juſtitiam Domini Regis defraudare, & Dominum Regem & Regnum offendere.
oncerning the point in law, demurred in Judgment, in the ſeventh of Edward the third,
mentioned by our Author: The law accounteth the beginning of the forty days after the
g entreth into the Foreign Nation, for then the war beginneth, and till he come there, he
his hoſt are ſaid to go towards the war, and no Military ſervice is to be done, till the
g and his hoſt come thither.

¶ *Sir William Herle.* A famous Lawyer conſtituted chief Juſtice of the common
as by Letters Patents dated 2 die Martii anno 5 E. 3. It appeareth by Littleton, and by
Records that he was a Knight, againſt the conceit of thoſe, that think, that the chief Ju=
s of the court of Common Pleas were not knighted till long after.
Our ſtudent ſhall obſerve that the knowledge of the law is like a deep Well out of which
man draweth according to the ſtrength of his underſtanding. He that reacheth deepeſt, he
h the amiable and admirable ſecrets of the law, wherein, I aſſure you, the Sages of the
in former times, (whereof Sir William Herle was a principal one) hath had the deepeſt
h. And as the bucket in the depth is eaſily drawn to the uppermoſt part of the water, (for
lum elementum in ſuo proprio loco eſt grave) but take it from the water, it cannot be drawn
ut with a great difficulty. So albeit beginnings of this ſtudy ſeem difficult, yet when the
feſſor of the law can dive into the depth, it is delightful, eaſie, and without any heavy
hen, ſo long as he keep himſelf in his proper element.

¶ *Juſtice*

Glanvil 2.c.6.&c.
‡ 8 Co. 88. ‡ 4 Inst. 99.
‡ 4 Co.24.

¶ *Justice.* In Glanvil he is called Justitia in ipso abstracto, as it were Justice it self, which appellation remains still in English and French, to put them in mind of their duty and functions. But now in legal Latine they are called Justiciarij tanquam justi in concreto, and they not called Justiciarii de Banco, &c. and never Judices de Banco, &c.

¶ *Common Banke.* Banke is a Saxon word, and signifieth a Bench or high seat, or a Tribunal, and is properly applied to the Justices of the Court of Common Pleas, because the Justices of that Court set there as in a certain place: for all writs returnable into that court are Coram Justiciariis nostris apud Westmon. or any other certain place where the court set, and the Records term them Justiciarii de Banco. But writs returnable into the Court called the Kings Bench, are Coram nobis (i.e. Rege) ubicunque fuerimus in Anglia. And all judicial Records thereof are stiled coram Rege. But for distinction sake it is called the Kings Bench, both because the Records of that court are stiled (as hath been said) Coram Rege, and because Kings in former times have often personally set there. For the Antiquity of the court of Common Pleas they err, that hold that before the statute of Magna Charta there was no court of Common Pleas, but had his creation by or after that charter: for the learned know, that in the six and twentieth year of Edward the third, the Abbot of B. in a writ of Assize, brought before the Justices in Eire claimed conusance and to have Writs of Assize, and other original writs out of the Kings Court by prescription, time out of mind of man, in the reigns of St. Edmond, and St Edward the Confessor before the Conquest. And on the behalf of the Abbot were shewed divers allowances thereof in former times in the Kings Courts, and that King Henry the First confirmed their Usages, and that they should have conusance of Pleas, so that the Justices of the one bench, or the other should not intermeddle. And the statute of Magna Charta erecteth no court, but giveth direction for the proper Jurisdiction thereof in these words. Communia Placita non sequantur Curiam nostram, sed teneantur in aliq̃ certo loco. And properly the statute saith, non sequantur, for that the Kings bench did in those days follow the King ubicunque fuerit in Anglia, and therefore enacteth that common pleas should be holden in a certain place. In the next chapter of Magna Charta (made at ons and the same time) it is provided: Et ea quæ per eosdem (s. Justiciarios itinerantes) propter difficultatem aliquorum articulorum terminari non possunt, referantur ad Justiciarios nostros de Banco, & ibi terminentur. And in the next to that, Assisæ de ultima præsentatione semp. capiantur coram Justiciariis de Banco, & ibi terminentur. Therefore it manifestly appeareth, that at the making of the statute of Magna Charta there were Justiciarii de Banco, which all men confess to be the court of common Pleas. And therefore that court was not erected by or after that statute. For the authority of this Court, it is evident by that which hath been said, that it hath Jurisdiction of common Pleas. But let us return to Littleton.

26 Ass. p.24. 4 E.3.f.19.
Bracton Lib 3.f.[105.b
Britton fol. 1. & 2.
Fleta lib. 2. cap. 2..
Mirror cap.5. sect.1.
Forsescue cap. 51.
See in the Preface to the third part of my Reports
‡ 6 Co. 11.

Mirror cap.5. sect.2.
Fleta lib.2.cap.54.
‡ 4 Co. 27.

¶ *Demurre en Judgment.* A Demurrer cometh of the Latine word demorari to abide, and therefore he which demurreth in Law, is said, he that abideth in Law, Moratur, or demoratur in lege. Whensoever the councel learned of the party is of opinion, that the Count or Plea of the adverse party is insufficient in law, then he demurreth or abideth in law, and referreth the same to the Judgment of the Court, and therefore well saith Littleton here, demurre Judgment, the words of a Demurrer being Quia narratio, &c. materiaque in eadem contenta minus sufficiens in lege existit, &c. and so of a Plea, Quia Placitum, &c. materiaque in eodem contenta minus sufficiens in lege existit, &c. unde pro defectu sufficientis narrationis sive placiti, &c. petit judicium, &c. But if the Plea be sufficient in Law, and the matter of Fact be false, then the adverse party taketh issue thereupon, and that is tryed by a Jury, for matters in Law are decided by the Judges, and matters in Fact by Juries, as elsewhere is said more at large.

; Cro. Car. 513.
† Hob. 233. ‡ 5 Co. 69. b. 104. ‡ Hob. 164.
‡ Doc. Pla. 115.

Now as there is no issue upon the Fact, but when it is joyned between the parties, so there is no Demurrer in law, but when it is joyned, and therefore when a Demurrer is offered by the one party as is aforesaid, the adverse party joyneth with him, (for example) saith, Quod Placitum prædictum, &c. meteriaque in eodem contenta bonum & sufficiens in lege existunt, &c. & petit judicium, and thereupon the Demurrer is said to be joyned, and then the case is argued by councel learned of both sides, and if the points be difficult, then it is argued openly by the Judges of that Court, and if they or the greater part concur in opinion, accordingly Judgment is given, and if the Court be equally divided, or conceive great doubt of the case, then may they adjourn it into the Exchequer Chamber, where the case shall be argued by all the Judges of England, where if the Judges shall be equally divided, then (if none of them change their opinion) it shall be decided at the next Parliament by a Prelate, two Earls, and two Barons which shall have power and commission of the King in that behalf, and by advice of themselves, the Chancellor, Treasurer, the Justices

Vid. Brac. l. 5. f. 352. b.
14 E. 3. cap 5. Statut. 1.

one bench and the other, and other of the Kings councel, as many and such as shall seem venient, shall make a good Judgment,&c. And if the difficulty be so great as they cannot ermine it, then it shall be determined by the Lords in the upper house of Parliament. Vide statute, for it extends not only to the case abovesaid but also where Judgments are delay= in the Chancery, Kings bench, Common Bench, and the Exchequer, the Justices assigned, other Justices of Oyer and Terminer, sometime by difficulty, sometime by divers opinions Justices, and sometime for other causes. (a) Before which statute, if Judgments were not en by reason of difficulty, the doubt was decided at the next Parliament, which then was be holden once every year at the least, (b) Si autem talia nunquam prius evenerint, & obscu- & difficile sit eorum judicium, tunc ponatur judicium in respect' usque ad magnam curiam, ut per concilium curiæ terminen'. But hereof thus much shall suffice. (c) He that demurreth in confesseth all such matters of fact as are well and sufficiently pleaded. If there be a De= rrer for part and no Issue for part, the more orderly course is to give Judgment upon the murrer first, but yet it is in the discretion of the Court to try the issue first if they will. ter Demurrer joyned in any Court of Record, the Judges shall give Judgment according the very Right of the cause and matter in law shall appear, without regarding any want form in any Writ, Return, Plaint, Declaration, or other Pleading, Process, or course of ceeding, except those only which the party demurring shall specially and particularly set on and express in his Demurrer. (a) Now what is substance and what is form you shall d in my Reports.

And in some cases a man shall allege special matter, and conclude with a Demurrer, (b) as an Action of trespass brought by I.S. for the taking of his horse, the Defendant pleads that himself was possessed of the horse until he was by one I. S. dispossessed, who gave him to the aintiff, &c. the Plaintiff saith that I. S. named in the bar, and I.S. the Plaintiff were all person, and not divers; and to the plea pleaded by the Defendant in the manner, he de= rred in law, and the court did hold the Plea and Demurrer good, for without the matter al= ged he could not demur. Now as there may be a Demurrer upon counts and pleas, so there y be of Aid prier, Voucher, Receit, waging of law, and the like. (c) By that which hath n said it appeareth, that there is a general Demurrer, that is shewing no cause, and a spe= demurrer which sheweth the cause of his demurrer. Also by that which hath been said there demurrer upon pleading, &c. and there is also a demurrer upon evidence (d) As if the aintiff in evidence shew any matter of Record, or Deeds, or Writings, or any sentence in the clesiastical Court, or other matter of evidence by testimony of witnesses, or otherwise, where= n doubt in law ariseth, and the Defendant offer to demur in law thereupon, the Plaintiff not refuse to joyn in demurrer no more than in a demurre upon a count, Replication, &c. so E converso, may the Plaintiff demur in law upon the evidence of the Defendant.

But if (e) evidence for the King in an Information or any other suit be given, and the De= dant offer to demur in law upon the Evidence, the Kings Councel shall not be enforced joyn in Demurrer: but in that case, the Court may direct the Jury to find the special tter.

¶ *En Judgment.* For the signification of this word, Vide Sect. 366.

Rot. Parl. 14 E. 3. nu. 31. a proceeding in Sir John Stantons case upon a difficulty in the Court of Common Pleas.
Vide Britton fol. 41.
21 E. 3 37. 38.
39 E. 3. fo. 1. 23. 35.
40 E 3. 34. 13 H. 4. 2. 4.
(a) 4 E. 3. ca. 14.
(b) Br. A. lib. 1. cap. 2. nu. 7. Brit fol. 41.
1 E 3. 7. 8. 2 E. 3. 6. 7.
‡ 5 Co 69. b ‡ Sid. 10. ‡ Post. 125. ‡ Hob. 232. 233. ‡ Doc. Pla. 115. 116.
(c) 17 E 3. 50 b. 47 E 3. 13. 14. 5 H. 7. 1. 13 E. 4. 7 b. Pl. Com. 35. 411. 172. ‡ Sid. 186. 290 ‡ Hob. 233.
48 E. 3. 15. 2. R. 2. inquest 2. 38 E. 3. 25. 11 H. 4. 5. 75. 3 E. 4. 2.
(a) Lib. 3. fol. 57. Linc. coll. case. Lib. 5. fol. 74. Wymeks case. Lib. 10. fo. 88. usque 98. Doctor Leyfields case.
‡ 1 Leon. 178. ‡ 2 Cro. 319. ‡ Doc. Pla. 34. 117 116.
(b) 13 E. 4. 7. 31 E 3. eKoppel. 944. 33 H. 6. 9. 10. 22 E. 4. 19. 1 H. 7. 21.
(c) 14 H. 4. 31. 37 H. 6. 6.
(d) Lib. 5. fol. 104. a. Baaers case.
‡ Cro Elix. 752. ‡ Hob. 232 233.
(e) 38 H. 8. Dyer 53.

Sect. 97.

ET apres tiel voyage royal Escoce, il est communement dit, que p thoritie de Parliament lescuage serra esse & mis en certaine, s. certaine summ dargent, quant scun que tient per ler fee de service chivaler q̃l ne fuit

AND after such a voyage royal into *Scotland*, it is commonly said, that by Authority of Parliament, the Escuage shall be assessed and put in certain, s. a certain sum of money; how much every one which holdeth by a whole Knights fee,

¶ *Apres voiage royal &c. il est communement dit, que per Authority de Parliament Escuage serra assesse.* Note, Here is a secret of Law included, that albeit Escuage incertain be due by Tenure, yet because the Assessment thereof concerned so many and so great a number of the Subjects of the Realm, it could not be assessed by the King or any other but by Parliament:

(a) and

(a) 13 H. 4. 5.

(a) and this was by the common law.

(b) H. 8. 3. Rot. Claus. & Rot. Finium. memb. 30. & ante.

(b) No Escuage was assessed by Parliament since the Reign of Edward the second, and in the eighth year of his Reign Escuage was assessed.

Staff. p. 14 E. 3. de banco.

If the tenant goeth with the King, and dieth in exercitu, in the Host or Army, he is excused by Law, and no Escuage shall be demanded.

F.N.B. 84. & 2 Rol. 508.

And it is to be observed, that if he that holds of the King by Escuage, goeth, or findeth another to go for him with the King, &c. then he shall have Escuage of his Tenants that hold of him by such service, which must be assessed by Parliament.

F.N.B. 84.

But if the Kings Tenant goeth not with the King, then he shall pay for his default Escuage, and shall have no Escuage of his Tenants.

Rot. Parl. 9 R. 2. nu. 40.

Richard the Second making a voyage Royal into Scotland, at the Petition of his Commons pardoned the payment of Escuage.

per luy meisme, ne per un auter pur luy ove le Roy, patera a son Seignior de que il tient la Terre per escuage. Sicome mittomus, que il fuit ordaine per Authoritie de la Parliament que chescun que tient per entire fee dun service de chivaler, que ne fuit ove le Roy, payera a son Seignior 40. s. donque celuy que tient per moitie dun fee de Chivaler ne payera a son Seignior forsque xx. s. & celuy que tient per la quart part de fee de Chivaler ne payera forsque x. s. & sic que pluis, pluis, & que meins, meins.

who was neither by himself nor by any other, with the King, shall pay to his Lord of whom he holds his land by Escuage. As put the case that it was ordained by the Authority of the Parliament, That every one which holdeth by a whole Knights fee, who was not with the King, shall pay to his Lord 40 s.; then he which holdeth by the moity of a Knights fee shall pay to his Lord but 20. s. and he which holdeth by the fourth part of a Knights, fee, shall pay put x. s. & he which hath more, more, and which less, less.

Sect. 98.

Vide Sect. 120.

¶ *As cuns teignont per custome &c.* Nota, that Escuage is directed by custom.

25 E. 2. tit. Avow. 215. 26 Ass. 65. 30 E. 3. 23. b. Lib. 4. fol. 88. in Luttrels Case.

¶ *Mes auterment est de Escuage certaine.* Here it appeareth, that escuage is twofold, viz. Escuage Incertain, whereof Little. here speaks; and Escuage certain, quemadmodum incertitudo scutagij facit servit' militare ita certit. scu-

¶ Et ascuns tiegnont per la custome q̄ si lescuage courge per authoritie de Parliament a ascun summe de money, que ils ne paier. ont forsque la moitie de ceo, & ascuns teignout que ils ne payeront forsque le quart part de ceo. Mes pur ceo que lescuage que ils paieront est non certaine pur ceo que nest certaine coment le Parliament

And some hold by the custom, That if Escuage be assessed by authority of Parliament at any sum of mony, that they shall pay but the moity of that sum, and some but the fourth part of that sum. But because the Escuage that they should pay is uncertain, for that it is not certain how the Parliament will assess the Escuage they hold by Knights fee assessed

eſſera Eſcuage queux gnont per ſervice de hivaler. Mes au- tement eſt de leſcuag̃ rtain, de que ſerra rle en le tenure de tage.

Sect. 99.

ET ſi home parle generalement eſcuage, il ſerra en- ndue per le common rlance deſcuage nō- rtaine, que eſt ſer- ce de Chivaler, & el eſcuage trait a y homage, & ha- ag̃ trait a luy Fe- lie, car fealtie eſt cident a cheſcun anner de ſervice alque a le tenure Frankalmoigne, ue ſerra dit apres le Tenure de rankalmoigne. Et int il que tient per ſcuag̃, tient per ho- ag̃ fealtie & Eſcuag̃.

And if one ſpeak generally of Eſcuage, it ſhalll be intended by the common ſpeech of Eſcuage incertain, which is knights ſervice: And ſuch Eſcuage draweth to it Homage, and Homage draweth to it Fealty; for Fealty is incident to every manner of ſervice, unleſs it be to the Tenure in Frankalmoign, as ſhall be ſaid afterward in the Tenure of Frankalmoigne. And ſo he which holdeth by Eſcuage, holds by Homage, Fealty and Eſcuage.

¶ *ET ſi home parle generalement de- ſcuage il ſerra intend' per le common parlance deſcuage non certaine.*

Verba æquivoca & in dubio poſita intelliguntur in digniori & potentiori ſenſu. **Tenure** in capite ex vi termini **is a Tenure in Groſs, and it may be holden of a ſubject, but being ſpoken generally, it is** ſecundum excellentiam, **intended of the King, for he is** Caput Reipublicæ.

‡ 2 Inſt. 485. ‡ 6 Co. 20. ‡ Poſt. 78. b 189. a. 381. b. ‡ Ibid. 265. ‡ Ante 61. b. 11 Co 39. a. Entendments en Ley Sect 100 110 367. 377. 393. 406. 463. 5 E. 2. Ref. 165. 20 H. 6. 5. 21 H. 2. 8. 37 H. 29. 13 H 4. 4. 6 El Dyer 236. 10 E. 4. 11. 32 E. 3. Gard. 31. Britt. fo. 163. ‡ F.N.B. 82. c.

¶ *Et tiel eſcuage trait a luy homage, & homage trait a luy Fealty, car Fealty eſt incident a cheſcun manner de ſervice forſque a tenure en Frankalmoigne.*

40 E. 3. 21. 8 H. 7. 4.

Sect. 100.

This is gathered by the effects of their Tenure, for eſſences are found out by properties as ſtrains by Rivers, and cauſes by effects: for amongſt others, the Lord ſhall have Eſcuage their Tenants, &c. as it followeth.

ET eſt aſcavoire, Que q̃n eſcuage eſt tielment aſ- ſe per authoritie de Parliament cheſcun Seignior de que le terre t tenus per Eſcuage, avera ſcuage iſſint aſſeſſe per Parlia- ent, pur ceo que il eſt intendus r la ley, que al commencement

And it is to be underſtood, that when Eſcuage is ſo aſſeſſed by Authority of Parliament, every Lord of whom the Land is holden by Eſcuage, ſhall have the Eſcuage ſo aſſeſſed by Parliament, becauſe it is intended by the Law, That at the beginning ſuch Tenements were

tiels tenements fuer dones p les Sñrs a lez tenants de tener per tielx services a Defender lour Sñrs, aury bien come le Roy, & mitter en quiet lour Sñrs & le Roy, de les Scotes avandits.

given by the Lords the tenants hold by such services to defe their Lords aswel as the King and to put in quiet their Lor and the King from the Scots afo said.

Sect. 101.

‡ 2 Rol. 508. F.N.B. 84. Register 88. de Scutagio habend. ‡ Post. 8. a. ‡ Sid. 187.

¶ *LES Seigniours averont lescuage, &c.* This is evident.

¶ *Briefe le Roy.* This cometh of the Latin word Breve.

Fitzh. in his Preface to his N.B. saith of them, that they be those foundations whereupon the whole law doth depend.

(a) Bracton describeth a Writ thus, Breve quidem cum sit formatum ad similitudinem regulæ juris, quia breviter & paucis verbis intentionem proferentis exponit & explanat sicut regula jur' rem quæ est breviter enarrat, non tamen ita breve esse debeat quin rationem & vim intentionis contineat.

(a) Bracton lib. 5. fo. 413. Fleta lib. 2. cap. 12. Britton fol. 122, 227.

Of Writs some be original, brevia originalia, and some be judicial, brevia judicialia.

Also of Originals, quædam sunt formata sub suis casibus & de cursu, & de communi consilio totius regni concessa & approbata, quæ quidem nullatenus mutari poterint absque consensu & voluntate eorum; & quædam sunt Magistralia, & sæpe variantur secundum varietatem casuum, factorum & querelarum, as for example, Actions upon the case which vary according to variety of every mans case, and the like, and these being not of course, the Masters learned men did make: Item brevium originalium alia sunt realia, alia personalia, alia mixta. Is brevium originalium, alia sunt patentia sive aperta, & alia clausa. Certain it is that the original Writs are so artificially and briefly compiled, as there is nothing redundant or wanting in them, of which an honourable Secretary of state once said, that it was not possible to comprehend so much matter, so perspicuously in fewer words: Of all these kinds of writs you shall read plentifully in the Register, whereof Little maketh mention in this place, and also in Fitz. N.

: 7 Co. 4. a. ; 4 Inst. 80.

¶ *Sicome appiert per le Register.* Register, is the name of a most ancient Book of great Authority in law, containing all the original writs of the Common Law, of which Book see more in the Preface to the ninth part of my Reports, and containeth also Brevia cialia quæ sæpius variantur secundum varietatem placitorum proponentis & respondentis.

r Plow. 228. a. ; 4 Inst. 79. F.N.B. 561. Bracton ubi supra. Britton ubi supra. Regist. 88. F.N.B. 84. F.N.B. 84.

Also it appeareth by the Register, that the King shall have escuage of his tenants which hold of him as of a Mannor which he hath in ward, or by reason of a vacation of a Bishoprick. And so shall a common person, if he hath an estat for life or for years of a Seigniory

Sect.

¶ *ET pur ceo que tiels tenemẽts devienḋ primes des Seignions, il est reason que ils averont lescuage de lour Tenants. Et les Seignions ẽ tiel case purront distreiñ pur lescuage issint assesse, ou ilz en ascuns cases purront aver brief le Roy, direct as Viconts de mesme les Counties, &c. de evier tiel escuage pur eux, sicome appiert per le Register. Mes de tiels tenants queux teignont per escuage de Roy, queux ne fueront ove le Roy en Escoce, le Roy mesme avera lescuage.*

And because such Tenements came first from the Lords it is reason that they should have the Escuage of their Tenants. And the Lords in such case may distrain for the escuage so assessed or they in some case may have the King Writ directed to the Sheriffs of the same Counties, &c. to levy such escuage for them as it appeareth by the Register. But of such tenants as hold of the King by Escuage which were not with the King in *Scotland*, the King himself shall have the Escuage.

Sect. 102.

Item, en tiel case avantdit, iou le oy face un voyage oyal en Escoce, & scuage est assesse per arliament, si le Sñr reine son tenant e tient de luy per vice denter fee de ivaler pur lescu- e issint assesse, &c. e tenant plede, & it averrer que il t ove le Roy in Es- c, &c. per 40. jours. le Seignior voit errer le contrarie, est dit, que il serra e per le certificat l Marshal del host Roy en escript uth son scale que ser- mis a les Justi- s.

Item, in such case aforesaid, where the King maketh a voyage Royal into *Scotland*, and the Escuage is assessed by Parliament, if the Lord distrain his tenant that holdeth of him by service of a whole Knights fee, for the Escuage so assessed, &c. and the tenant pleadeth and will aver that he was with the King in *Scotland*, &c. by 40 daies, and the Lord will aver the contrary, it is said that it shall be tried by the Certificate of the Marshall of the Kings host in writing under his Seal, which shall be sent to the Justices.

¶ *ET voit averrer, que il fuit ove le Roy en Escoce per 40 jours, &c.* (a) *il est dit que il serra trie per le certificat del Marshal.* This is a trial appointed by the law, Ne curia regis deficeret in Justitia exhibenda. (b) Herewith agreeth the Register, where the Marshal is called Constabularius exercitus nostri.

‡ 6 Co. 21.
(a) 2 E. 4. 11. 4 E. 4. 10. 21 E. 4. 10. F.N.B. 85. 11 H. 7. 5 Lib. 9. fol. 32. Case de Strat. Marc. ‡ 10 Co. 68.
(b) Regist. 88. F.N.B. 84. 2 E. 4. 1. 4 E. 4. 10. 9 H. 4. 3. 11 H. 7. 5. 21 H. 6. 50. 33 H. 6. 1. 45.

¶ *Marshal de hoste le Roy.* Marescallus exercitus in Saxon Marischalk, i. e. equitum magister. This word Marshal is either derived of Mars or Mare, an Horse and Schalc, which signifieth in the Saxon Tongue a Master or Governour. (c) In the laws before the conquest it is said, Marescalli exercitus seu ductores exercitus Heretoches per Anglos vocabantur, illi ordinabant acies densissimas in præliis & alas constituebant prout decuit, & prout ei melius visum fuerit ad honorem coronæ & ad utilitatem regni. (b) And here it is to be observed, that his certificate in this case is a Trial in law.

(c) Lamb. fo. 136.

(d) 2 E. 4. 1 b. 4 E. 4. 10. 23 E. 4. 47. F.N.B. 85. ‡ 2 Rol. 511. 583. ‡ 9 Co. 34. ‡ 2 Inst. 428. ‡ 2 Rol. 583. 803.

read of six kinds of Certificates allowed for Trials by the Common law; the first wherein ttleton here speaketh of, in time of war out of the Realm. 2. In time of Peace out of out calm: (e) As if it be alledged in avoidance of an Outlawry, that the Defendant was Prison at Burdeaux in the service of the Major of Burdeaux, it shall be tried by the Certi- ate of the Major of Burdeaux, 3. For matters within the Realm (f) the custom of London all be certified by the Mayor and Aldermen by the mouth of the Recorder. 4. By Certi- te of the Sheriff upon a writ to him directed (g) in case of privilege, if one be a Citizen a Forreiner. 5. Trial of Records by certificate of the Judges in whose custody they are law. All these be in temporal causes. 6. In causes Ecclesiastical, as loyalty of marriage, neral bastardy, excommengement, profession. These ched an like are regularie to be tried the Certificate of the Ordinary.

(e) 4 E. 4. 10. ‡ Post. 261. a. 363. b.
(f) 5 E. 4. 30. 21 E. 4. 16
(g) 10 H. 6. 10. ‡ 9 Co. 31. ‡ 2 Rol. 579 ‡ 2 Cro. 102. Fortesc. 74. ‡ 9 Co. 31. ‡ 12 Co. 67. 9 Co. 117.

And there be divers other trials allowed by the Common law, than by a Jury of 12 men, hich you may read at large in the ninth book of my Reports, fo. 30, 31, &c. in the case of the bbot of Strata-Marcella, which are as plainly set down there, as they can be here: and in this se, if the Trial should not be by Certificate, it should want Trial, which should be incon- nient: Only in this place I will add something of a Forraign Trial, which I find not in- y of the Treatises lately published against single combats, because it may deter men from e ungodly and unlawful kind of revenge whereupon many murders have ensued, and pre- nt all hope of impunity for default of Trial in that case.

‡ 2 Rol. 571. ‡ Post. 161 Stat. de 1 H. 4. cap. 14.; 13 H. 4. fol. 5. Vid. Rot. Parliam 8 H. 6. na. 38. Stanf. pl. Cro. f. 65. ‡ 4 Inst. 124. ‡ 7 Co. 2. a

If a subject of the King be killed by another of his subjects out of England in any For- ign Country, the wife or he that is heir of the dead may have an Appeal for this mur- r or homicide before the Constable and the Marshal, whose sentence is upon testimony witnesses or combate. And accordingly where a subject of the King was slain in Scot-

land by others of the Kings subjects, the wife of the dead had her appeal therefore before the Constable and the Marshal. And so it was * resolved in the Reign of Queen Elizabeth, in the case of Sir Francis Drake who strook off the head of Down, in partibus transmarinis, that the Brother and heir might have an Appeal, Sed Regina noluit constituere Constabularium Angliæ, &c. & ideo dormivit appellum.

‡ Post. 261.
Anno 25 Eliz.
‡ Hutton 3.

If a man be mortally wounded in France, and dieth thereof in England, it is said that an Appeal doth lie upon the said statute, for it is not punishable by the Common law, and the proceeding there (as hath been said) is upon witnesses or combat, and not by Jury, and the mortal wound was given out of the Realm.

‡ 2 Co. 93. ‡4 Inst. 124.

Chap. 4. Sect. 103.

Knights Service.

¶ *Service de Chivaler.* Nota, it appeareth by [a] the Register, that it is (a) said unum feodum militis, and not feodum unius militis, as it was said, [c] by some of old, and so duo feoda militis, &c. and sometimes these fees are called feoda militaria. Our Author having before treated of Homage, Fealty, and Escuage, now cometh to Knight service it self. In Domesday it is thus recorded, Episcopus Bajecensis ille qui tenet de Modardo reddit ei 50 s. & servitium unius militis.

‡ 6 Co. 73.
[a] Glanvil lib. 7. cap. 10
[b] Regist. 2. 30 E. 3. 24

[c] Glanvil lib. 7. cap. 14.
Glanvil lib. 7. c. 9. &c.
Fleta lib. 1. cap. 8.
Bracton lib. 2. fol. 85.
Britton fol. 162. & fol. 28. & 95. Ockham in diversis locis.
Mirror cap. 1. sect. 3.
Sud. Diton.

¶ *Chivaler.* i. e. Eques Knight is a Saxon word, and by them written, Cnite, Chivaler taketh his name from the horse, because they always served in wars on horseback. The Latins called them Equites, the Spaniards Cavalleroes, the Frenchmen Chivaliers, the Italians Cavallieri, and the Germans Reiters, all from the Horse. It is necessary to be seen by what names this service of a Knight is called. It is called [e] Servitium forinsecum quia pertinet ad Dominum Regem & non ad capitalem Dominum nisi cum in propria persona profectus fuerit in servitio, & nisi cum pro servitio suo, satisfecerit Domino Regi, &c. ideo forinsecum dici potest, quia fit & capitur foris sive extra servitium quod fit

F. N. B. 82. a.
‡ 2 Rol. 167.

[e] Bract. lib. 2. fo. 36. 37
Britton fol. 164. 165.
Fleta lib. 3. cap. 14.
19 E. 2. avowry 224.
26 Ass. 65. 31 Ass. 30.
30 E. 3. 23. 8 E. 3. 67.
7 H. 4. 19.
‡ Ante 68. b. 69. b.

¶ Tenure per homage, fealty, & escuage, est a tener per service de Chivaler, & trait a luy garde, marriage, & relieve. Car quant tiel tenant muust, & son heire male est deins lage de 21 ans, le Seignior avera la terre tenus de luy tanqz al age del heire de 21 ans, le quel est appel pleine age, pur ceo que tiel home per entendement del ley nest pas able de faire tiel service de Chivaler, devant lage de 21 ans: Et auxy si tiel heire ne soit marie al temps de mort de tiel auncestor, donque le Seignior avera le garde & le marriage de luy. Mes si tiel tenant debie, son heire female esteant dage de 14 ans, ou de plus, donque le Seignior

Tenure by homage, fealty and Escuage, is to hold by Knights Service, and it draweth to it Ward, Marriage, and relief. For when such tenant dieth, and his heir male be within the age of 12 years, the Lord shall have the land holden of him until the age of the heir of 21 years, the which is called full age, because such heir by intendment of the Law is not able to do such Knights service before his age of 21 years. And also so if such heir be not married at the time of the death of his Ancestor, then the Lord shall have the wardship and marriage of him. But if such tenant dieth, his heir female being of the age of 14 years, or more, then the Lord

vera my le garde
l terre ne de corps
r ceo que feme
tiel age poit aver
ron able de faire
vice de Chivaler.
es ſi tiel heire
male ſoit deins
ge de 14 ans, &
ent marie al temps
la mort ſon
nceſter, donque le
eignior avera le
rde de la terre, te-
s de luy, tanque
age de tiel heire
male de 16 ans,
r ceo que il eſt done
le Statute de
eſtm̃ 1. cap. 22.
ue per 2 ans pos-
eine enſuant les
s 14 ans, le Seig-
r poit tender con-
nable mariage ſans
paragement a tiel
re female. Et ſi le
eignior deins les
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der tiel mariag̃, &c.
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r. Mes ſi tiel
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r navera forſque la
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s a fine de 14
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re female, & donqz

ſhall not have the wardſhip of the land, nor of the body, becauſe that a woman of ſuch age may have a husband able to do Knights Service, but if ſuch heir female be within the age of 14 years, and unmarried at the time of the death of her anceſtors the Lord ſhall have the wardſhip of the land holden of him until the age of ſuch heir female of 16 years. For it is given by the Statute of W. 1. cap. 22. that by the ſpace of two years next enſuing the ſaid 14 years, the Lord may tender convenable marriage without diſparagement to ſuch heir female. And if the Lord within the ſaid two years do not tender ſuch marriage, &c. then ſhe at the end of the ſaid 2 years may enter, and put out her Lord; but if ſuch heir female be married within the age of 14 years in the life of her Anceſter, and her Anceſter dieth, ſhe being within the age of 14 years, the Lord ſhall have only the Wardſhip of the Land until the end of the 14 years of age of ſuch

Domino capitali. **And it is called** Scutagium, **as it appeareth** (f) **by** Littleton **and many authorities before recited. Sometime** Droit de eſpee. **Alſo it is called** (g) Regale ſervitium, quia ſpecialiter pertinet ad Dominum Regem. Ut ſi dicatur in Carta, faciendo inde forinſecum ſervitium, vel Regale ſervitium, vel ſervitium Domini Regis quod idem eſt, &c. **And another ſaith:** Et ſunt quædam ſervitia forinſeca quæ dici poterunt Regalia quæ ad ſcutum præſtantur, & inde habemus ſcutagium, & ratione ſcuti pro feodo militari reputatur, &c. **So as in reſpect of him that doth, it is called** ſervitium militis, **but in reſpect of him for and to whom it is done**, viz. **to the King, and for the Realm, it is called** ſervitium Regale, or ſervitium Domini Regis, &c. (h) **In ancient time they which held by knights ſervice were called** Milites, qui per loricas, &c. defendunt, & deſerviunt, &c. **and ſometime this ſervice is called** ſervitium hauberticum. **And in antient time ſuch as held by Knights ſervice for the defence of the Realm had many Privileges granted to them by Law: as for example they might have a Writ** De eſſend' quiet' de tallagio, **the effect whereof was** (i) Si Th. filius Ranulphi terram ſuam teneat per ſervitium militare ſicut Domino Regi monſtravit, tunc nullum ab eodem Tho. capient tallagium nec pro eo dando ipſum diſtringant, vel homines ſuos qui per conſimile ſervitium teneant. **And this agreeth with the antient charter of King** Henry **the Firſt before mentioned, which he made on the day of his Coronation for the reſtitution of the antient Laws.** (k) Militibus qui per loricas terras ſuas defendunt & deſerviunt terras Dominicarum carucat' ſuarum quietas ab omnibus gildis, & omni opere, &c. concedo, **and the reaſon thereof is there yielded,** Sicut tam magno gravamine allevati ſint

(f) Bract. ubi ſupra. Fleta lib. 3. cap. 14.

(g) Britton fol. 187. Bract. ubi ſupra. ‡ Roll. 506. ‡ Poſt. 108. ‡ 9 Co. 130.

(h) Carta Hen. prim. Mat. Paris. Mirror. cap. 2. ſect. 17.

(i) Rot. clauſ. 19 H. 3. m. 22.

(k) Carta H. 1. in libro rub. fol. 41. in Scaccario.

sint, ita equis & armis se bene instruant ut apti & parati sint ad servitium meum & defensionem Regni mei. **But these Priviledges and Muttances are discontinued, and the charge remaineth.**

‡ 4 Inst. 192. ‡ Sid 267.
(l) Glanvil li. 7. ca. 9. 10. Fleta lib. 1. ca. 8 & 9. & lib 3. cap. 16. 17. &c. Bracton lib. 2, cap. 16. Mirror cap. 5. sect. 2. Britton 162.

It is called commonly in (l) **our Books** servitium militare, &c. or servitium militis. **And this service was created and provided for the defence of the Realm, to perform which service the heirs are not accounted in law able till the age of one and twenty years. Therefore during their minority, the lord shall have the custody of them, not for benefit only, but that the Lord might see, that they be in their young years taught the deeds of Chivalry, and other vertuous and worthy Sciences.**

‡ 9 C. 131.
(m) Portescue cap. 44.

(m) Si hæreditas teneatur per servitium militare, tunc per leges infans ipse, & hæreditas ejus, &c. per Dominum feodi illius custodientur, &c. quis, putas, infantem talem in artibus bellicis quas facere, ratione tenuræ suæ, ipse astringitur Domino feodi sui, melius instruere poterit, aut velit, quam Dominus illecui ab eo servitium tale debetur, & qui majoris potentiæ & honoris estimatur, quam sunt alii amici propinqui tenentis sui? Ipse namque ut sibi ab eodem tenente melius serviatur diligentem curam adhibebit, & melius in hiis eum erudire expert' esse censetur quam reliqui amici juvenis, &c. & revera non minimum erit Regno accommodum, ut incolæ ejus in armis sint experti, nam audacter quilibet facit, quod se scire ipse non diffidit.

(n) Lamb. 135 a. ‡ 4 Inst. 193.

(n) **Amongst the Laws of Saint** Edward **the Confessor it is thus provided,** Debent enim universi liberi homines, &c. secundum feodum suum, & secundum tenementa sua arma habere, & illa semper prompta conservare ad tuitionem Regni, & servitium Dominorum suorum iuxta præceptum Domini Regis explendum & peragendum. **William the Conqueror confirmed that Law in these words:** Statuimus & firmiter præcipimus ut omnes Comites, & Barones, & Milites, & servientes, & universi liberi homines tot[a] Reg[ni]

son baron & luy potent enter ẽ la terre & ouste le Seignior, car ceo est hors de cas de le dit estatute, entant que le Seignior ne poit tender marriage a luy que est marie, &c. Car devant le dit estatute Westm̃ 1. tiel issue female que fuit deins age de 14. ans, al temps de mort son ancestor, & puis que el avoit accomplish lage de 14. ans sans ascun tender de marriage per le Seignior a luy, tiel heire female donque puissoit enter en le terre, & ouste le Seignior sicome appiert per le reherſal & parolr de le dit statute, issint que le dit Statute fuit fait en tiel cas, tout pur ladvantage de Seignions come il semble. Mes uncore ceo touts foits est entendue per les parolr de m̃ le Statute que le Seignior navera les deux ans apres les 14 ans, come est avantdit, mes lou tiel heire female soit deins lage de 14 ans, nient marie al temps de mort ẽ ancestor.

heir female, and then her husband and she may enter into the land, and oust the Lord: For this is out of the case of the said statute, insomuch as the lord cannot tender marriage to her which is married, &c. For before the said statute of W. 1. such issue female which was within the age of 14 years at the time of the death of her ancestor, and after she had accomplished the age of 14 years, without any tender of marriage by the Lord unto her, such Heir Female might have entred into the land, and ousted the Lord as appeareth by the rehearsal and words of the said statute, so as the said statute was made (as it seemeth) in such case altogether for the advantage of Lords. But yet this is alwaies intended by the words of the same Statute, that the Lord shall not have these two years after the 14 years, as is aforesaid, but where such heir female is within the age of 14 years and unmarried at the time of the death of her ancestor.

ni nostri prædicti habeant & teneant se semper in armis & in equis ut decet, & oportet, & quod
semper prompti & parati ad servitium suum integrum nobis explendum & peragendum cum
p.r opus adfuerit, secundum quod nobis debent de feodis & tenementis suis de jure facere, &c. But
these two Laws the studious and learned Reader will gather divers notable things. And
therefore if after the Lord hath the wardship of the body and the land, the Lord doth release to
infant his right in the Seigniory, or the Seigniory descendeth to the infant, he shall be
of ward both for the body and the land, for he was in ward in respect he was not able to do
ose services which he ought to do to his Lord, which now are extinct, and Cessante causa cessat
usatum. And our Author saith, that the tenure by Knights service draweth unto it ward,
arriage, &c. so as there must be a tenure continuing. As if the Conusor in a statute Mer-
ant be in execution, and his land also, and the Conusee release to him all debts, this shall
charge the execution, for the debt was the cause of the execution, and of the continuance of
till the debt be satisfied, therefore the discharge of the debt which is the cause, discharges
execution which is the effect.

¶ *Et trait a luy gard, marriage, & reliefe.* So as regularly there be six
idents to Knights service, (viz.) two of honour and submission, as Homage and Fealty.
nd four of profit, viz. Escuage whereof he hath treated before, Ward, (i.e. wardship of the land)
arriage, and Reliefe; of all which our Author hath spoken. But there be other incidents to
nights service besides these, (a) as Aide pur faire fits chivaler, & aide pur file marier, &c.
hich at the Common Law were uncertain, and were called rationabilia auxilia, because if
y were excessive and unreasonable in the judgment of the Court where they were que-
oned, they ought not to be paid: But now as well in the Kings case, as in the case of
subject, they are by Acts of Parliament reduced to certainty, which are worthy your
ading.

¶ *Gard*, or Ward, in' Latin Custodia, and hereof the Lord is called Gardian, custos,
d the minor is called a Ward, or one in Ward. (b) And albeit (as our Author saith) Knight
vice draweth with it ward, &c. yet by Custom the heir of him that holdeth in Socage may
in ward.

¶ *Marriage.* Maritagium betokeneth not only the copulation of man and wife in mar-
ge, but also (as in this place here) the interest of the Gardian in bestowing of a Ward in
arriage, which the Law gave to the Lord not for his benefit only, but that he should match
m vertuously and in a good family without disparagement, as shall be said hereafter, which
the principal foundation of his estate.

¶ (c) *Reliefe.* Relevium, is derived from the Latin word Relevare; for so (d) antient
uthors say, and give this reason, Quia hæreditas quæ jacens fuit per antecessoris decessum,
evatur in manus hæredum, & propter factam relevationem facienda erit ab hærede quædam
æstatio quæ dicitur relevium. And in Domesday it is called relevamentum and releva-
.

The relief of a whole Knights fee is five pound, and so according to that rate. And this
lief was sa some hold certain by the Common Law, but the relief of Earls and Barons
re incertain, and therefore were called relevia rationabilia, but the statute of Magna charta c. 2.
mits them in certain, and mentioneth also a Knights fee. But I read in the book of Domes-
y, Quod Tainus vel miles regis dominicus moriens pro relevamento dimittebat regi omnia arma
& equum unum cum sella & alium sine sella, quod si essent ei canes vel accipitres præstabantur
gi, ut si vellet, acciperet.

Since Littleton wrote (e) there is a good Law made against fraudulent Feoffments, Gifts,
ants, &c. contrived of fraud to hinder and defraud Lords, &c. of their Reliefs and Heriots
mongst other things, for the expostion of which statute read the statute and the Authorities
oted in the margent. And it is to be observed, that the words of the said Act of 13 Eliz. are,
e it thereof declared, ordained, and enacted] and therefore like cases, and in semblable mis-
lief shall be taken within the remedy of this Act by reason of this word [declared] whereby
appeareth what the law was before the making of this stature.

¶ *Son heire male.* (f) For regularly by the Common Law the heir shall not be in
ard unless he claim as heir by descent. The statute of Merton, De his qui primogenitos
offare solent; (g) did help the feoffments by collusion in certain cases. And Britton saith
at Robert de Walrand, a Sage of the Law, did advise the great Lords of the Realm to
ake the said statute, which when it was past, the same Act took his first effect in the heir
Walrands own heir, whereof Briton maketh a special remembrance. But now (h) by the
atutes of 32 and 34 H. 8. of Wills, he which holdeth lands by Knights service may by Act
ecuted in his life time, or by his last will in writing, dispose two parts, as by the said
ts appeareth. If he dispose all by act executed, then it shall stand good against the heir,
so

See W. 1. cap. 28. The second part of the Institutes.
‡ 6 Co. 22.
‡ Post. 245.
20 Ass. p. 5.
‡ 2 Roll. 404. ‡ Doct Pla. 136.
‡ 1 Roll. 311.

(a) Grand. Cust. de Norm. cap. 35 Regist orig. f. 87. Glanvil. lib. 9. cap 8. 35. Fleta lib. 2. cap 40. & lib. 3 ca. 14. Mirror ca. 1. Sect. 3. Britton fo 55. & 70. F.N.B. 82. b. W. 1. c. 35.
25 E 3. ca. 11. 11 H. 4 34
5 E 3 11. Vid. Sect. 110.
(b) 8 H. Prescript. 38. Pasch. 21 E. 1. Coram Rege rot. 43. Nota pro Hibernia Prior del St. Trinity de Dublin's case. ‡ F.N.B. 82. c.
‡ 4 Inst 188.

(c) Vid Sect 112.
(d) Bract. lib. 2 cap 36. fo. 84. Fleta lib 1. ca. 12. & lib. lib 3 cap. 16, 17. Britt ca 16, 17. Glanvil lib. 9. ca. 4. & lib 7. ca. 9. Ockham de diff rentils relevierum.
‡ Ante 69 b.
‡ Post 83. a.
Ockham ubi supra.
Bract lib. 2 fo 85.
(e) 13 Eliz cap. 5.
17 E. 3. Relief. 3.
7 E. 3. lib. 11. lib. 3. fo. 88. &c. Twines case.
‡ 8 Co. 132.
Lib. 5. fo. 60. Gooches case. Lib 6. fo 18 Pl. k. mans case. lib. 10. f. 56 b.
See also the statutes of 3 H. 7 c. 4 & 5 o E. 3. c. 6. Vid. Mich 12, & 13. Eliz. Dier. 295.
‡ F.N.B 96. a. ‡ 96. a. ‡ 96. d. ‡ 97.
‡ Ante 3. b.
(f) Britton 168. Fleta lib. 1. cap. 9.
(g) Merton cap. 6.
‡ 11 Rep. 23. Bract. fo. 85. Brit. fo. 65.
9 H. 4. 6. 4 H. 7 cap. 17.
27 H. 7 89.
Partridg. case Pl. com. 82.
(h) 32 H. 8. cap 1. 34 H. 8. cap. 5.
‡ Post 373. a.

‡ 10 Co. 80. ‡ 4 Co. 60.

so as nothing shall descend unto the heir. But in case of a Devise by his last will, a third part shall descend to the heir, though all be devised away: and if the Tenant leave a third part to discend, then the devise is good for the residue [i] But these things require so many diversities grounded upon evident reason, and are so plainly expressed in my Commentaries, as they (being very long) shall not need to be repeated here. [k] And that the tenure by Knights service draweth to it ward, Marriage, and Relief, is of great antiquity, for so it was in the time of King Alfred.

[i] Li. 3. f. 25. 26. in Butlers case. lib. 6. fo. 75. in Sir George Curtons case. Li 8. f. 163. Mights case. Eod. lib. fo. 171. in Vigil Parkers case.

[k] Mirr. ca. 1. sect. 3

¶ *Quant tiel tenant mort.* Here Littleton speaketh not of a dying seised by the tenant, for in many cases the heir shall be in ward, albeit the tenant died not seised, &c. not of the homage of the Lord. As if the tenant maketh a feoffment in fee upon condition, and the feoffor dieth, after his death the condition is broken, the heir within age entreth for the condition broken, he shall be in ward, and yet the feoffor had no estate or right in the land at the time of his death, but only a condition, and which was broken after his decease. * But because the condition restoreth the tenant to the land in nature of a descent, (for he shall be in by descent) by the same reason shall it restore the Lord to the wardship, seeing now, (as Littleton saith) the heir of his tenant is within age, and not able to do him service, and no default in the Lord to bar him of his wardship.

‡ 1 Co. 99.
* 39 E. 3. 36. tit. Gard. 92
33 E. 3. Gard. 162.
11 H. 7. 12 19 E. 3. Gard. 114. 18 Ass. 18. 40 Ass. 36. 20 El. 362. 4 H 6. 16. b. F. N. B. 143. 6 H 4 4. a.

[l] And so I do take it, that if the heir within age recover in a Dum non fuit compos mentis or Formedon en discender, or remainder as heir, or such like, the heir shall be in ward, for these be stronger cases than the former, for here a right doth descend to the demandant, which right being by course of law restored to the possession of the heir within age, by consequence the Lord is to have the wardship of him, but in the case of the condition, no right at all descended to the heir, as hath been said.

[l] 7 H. 4. 12. 11 H. 7. 12. 22 E. 4. 76. 40 E. 3. 43. 4 M. 136. 15 E 4. 10. 11.

And so if tenant in tail, the remainder in fee maketh a feoffment in fee, and dieth, leaving the issue in tail within age, if the feoffee infeoff the issue in tail, whereby he is remitted, he shall be in ward to the lord: for as he is restored to the title of the land as heir, so is the lord restored to his title of the wardship as lord of the Fee. And to this purpose herein I take the difference between a right of action and a right of entry discending, when by action the right of the land is lawfully recovered by the heir within age, to his tenant, and albeit he died not of his homage, yet there was a right of homage, and no default or laches was in the lord, or done by him to prejudice himself thereof.

‡ 2 Rol. 38. ‡ 3 Co. 1. 33 E. 3. Gard. 162.

But if one leby a fine executory (as Sur grant & render) to a man and his heirs, and he for whom the land is granted and rendred, before execution dieth, his heir being within age entreth, he shall not be in ward, for his Ancestor was never tenant to the lord: and so there is manifest diversity between this and other cases. Et sic de cæteris.

11 H. 7. 12. : 6 Co. 58. a. ‡ 9 Co. 33.

But if the tenant maketh a feoffment in fee of lands holden by Knights service, to the use of the feoffee and his heirs, until the time that the feoffee pay to the feoffee or his heir a hundred pounds, for the which a time and place is limited; the feoffee dieth, his heir within age, the lord shall have the wardship of the body of the heir, and of the lands of the feoffee, conditionally, for he cannot have a more absolute interest in the wardship, than the heir hath in the tenancy: therefore if the feoffor pay the mony at the day and place, and entreth into the land, in this case both the wardship of the body and lands is devested, because the lord had no absolute interest in either of them, but doth depend upon the performance or not performance of the condition.

13 El. Dyer 198.

So if the Conusor of a fine executory of lands holden by Knights service, dieth, his heir within age, the lord shall have the wardship of the body and land: but if the Conusee entreth the heir is deshertted, and the lord hath lost the whole benefit of his wardship.

‡ Post. 248. a. 12 H. 4 16. per Thirning

If the Disseisee dieth, his heir being within age, [m] the lord shall have the wardship of the heir of the body of the Disseisee. [n] But put the case that in that case the Disseisor dieth seised and his heir within age, the lord may seise the wardship of his heir also, and of the land also: but the doubt is, whether the heir of the Disseisee shall after the descent to the heir of the Disseisor, continue in ward, for that after the decent the heir of the Disseisor is become his lawful tenant, and the heir of the Disseisee is not tenant unto him until he hath recovered the land.

[m] 41 E. 3. 225. [n] 15 E. 4. 11.

If Cesty que use before the statute of 27 H. 8. had died, his heir within age, the lord [o] should have had the wardship of his heir: and if the feoffee had died, his heir within age, the lord should have had the wardship of his heir also, and so a double wardship for one and the same land, the one by the statute of 4 H. 7. the other by the Common law.

‡ Post. 27 a. ‡ 9 Co. 134. [o] 14 H. 8. 5. 4 H. 7 cap. [p] 41 E. 3. 26. tit. avo. 264. 20 H. 6. 9. 48 E 3. 8. b. 10 E. 3. 26. 31 E. 3. tit. Gard. 116. 18 E. 3. 7. 14 H. 4. 38. 1 H. 5. Grant 43. 5 E 4 3. 7 E. 4. 27. 15 E 4 13. 2 E. 2. avow. 181.

[p] Tenant by Knights service maketh a gift in tail, the remainder in fee, Tenant in tail maketh a feoffment in fee, and dieth, his heir within age, the lord shall have the wardship of him: and if the Feoffee dieth, his heir within age, the lord shall have the wardship also of the heir and of the land.

As tenant by Knights service maketh a gift in tail, and the Donee maketh a Feoffment in and the donee dieth his heir within age, the donor shall have the wardship of him, because is his tenant in right. (q) But if the feoffee dieth, his heir within age, the Donor shall have the wardship of his heir, but the Lord paramount, because he is tenant in fait to him, ther shall the donee avow upon the feoffee or his heir, for the services due unto him, because must in his avowry shew the reversion in fee to be out of him by the feoffment, and consequently the services incident to the reversion are also out of him but he shall avow upon the and his issue: and thus all the books that seem to be at variance, either answered or reconciled.

‡ 2 Rol. 38 ‡ 9 Co 138.
(q) So was it holden Tr. 18 El in Com. Banco per Cur. Which my self heard and noted, in Sir Thomas Wyats case.
(r) So was it resolved in Sir Tho. Wyate case ubi supra.

¶ (a) *La terre tenus de luy, &c.* Littleton here speaketh of lands holden of a ject: for if a man hold land of the King by Knights service in capite, and other land of o- r lords, and dieth his heir within age, the King shall have the wardship of all the lands by prerogative: and this was due to the King by the common law, the fees of certain except- as in the statute of Prærogativa Regis cap. 1, appeareth.
But if a man holdeth lands of the King by Knights service, as of an Honor, or Manor, &c. in that case the King shall only have the lands holden of him and not of any other. Yet by son of tenures of the King by Knights service, of certain honors (while they were in the ngs hands) the King (as some have said) had (as it were by prescription) his prerogative, Raleigh hage net bonony and Peverel and so of lands holden by Knights service of the Duc- of Lancaster in the County Palatine.

(a) Glanv. l. 7. c. 10. Bract. l. 2 f. 85. 86. 87. Brit. l. 3 c. 2 Flet. l. 1 c. 10 9 H. 3. Prerog. 25. 21 H. 3 ib. 26. Rot Finium. 6 Johan. Stat. Prero. Reg. c. 1. ‡ 2 Rol. 503.
(b) Bract. ubi. supr. Mag. carta c. 31. 1 E. 6. c. 4. 5 E. 3. 5. 47 E. 3. 21. 29 H. 8 Br. tit. Livery 58. 28 H. 8. ibid. 55.

(c) When an heir hath been in ward to the King by reason of a tenure in capite, after his age he must sue livery, which is half a years profit of his lands holden. But if he be of full at the time of the death of his ancestor, then he shall pay for lands in possession a whole rs profit for Primer seisin: but if it be of a reversion expectant upon an estate for life, as Te- t in Dower, Tenant by the Curtesie, or Tenant for Life, then he shall pay but the moity of years profit.

F. N. B. 255. e.
(c) Lib. 8. fol. 172. Hales case. 38 H. 8. Br. tit Livery 60. Vid. sect. 154.

(d) If the heir be in ward by reason of a tenure of an Honor or Manor (except as before) he l not sue livery, but an Ouster le maine cum exitibus, albeit he never made tender. (e) And if e of full age, the King shall have no Primer seisin, but relief. But where the tenure is in Ca- , there the King shall have the mean profits until the tender be made, and if the tender be e and not duly pursued, the King shall also have all the mean profits.

(d) 1 El. Dier 168.
(e) 32 H. 8. tit. Liv. Br. 62

(f) He that holdeth of the King by socage in chief, and dieth, his heir of full age, the King l have livery and Primer seisin only of the land so holden, and not of the lands holden of rs. (g) But if the heir of such a Tenant in Socage in chief, be within the age of four- at the death of his ancestor, he shall neither sue livery, nor pay Primer seisin, either then ny time after: and the reason thereof is, for that the custody of his body and lands in case, belong to the Prochein amy, as Gardian in Socage. (h) Neither shall the King have ner seisin of lands holden in Burgage, (as some have said) for that it is no tenure in Ca-

(f) 38 H. 8. Liver. Br. 60. 45 E. 3. 11. 35 H. 6. 52. Stanf. 13. b.
(g) 20 El. Dy. 362. F. N. B. 259. b. F. N. B. 258. a.
(h) F. N. B. 263. 7 E 4. 17. Stanf. Prær. 13. Br. tit. Liv. 64. ‡ Plow. 23. or 230.

Note, there is a general livery, and a special livery: a general livery hath two proper-

First, it is full of charge to the heir, for he must have an office in every County where hath land, or else he cannot sue a general livery, and he must sue out his writ of Ætate anda, &c.

F. N. B. 251.

) The second property is, that it is full of danger: First, it concludeth the heir for ever af- to deny any tenure found in the Office. Secondly, if livery be not sued of all and of every el which the King ought to have, whether it be found in the office or not found (for a gene- livery could not be sued by parcels) the livery is void, and the King may seise the lands, be answered of the mean profits. So it is if the office be insufficient, or the process where- e livery was made be insufficient, or the like, the King shall seise, as is aforesaid. (a) erefore for the case of the heir, and for avoiding of such danger, the heir for the most part out a special livery, which containeth a beneficial pardon, and saveth the said charges, and enteth the said conclusion, and the other dangers, which being of grace, and not of right, as general livery is, the King may well and justly take more for a special livery, than for a ral, for the causes aforesaid, but ever with such moderation as the heir may cheerfully go ugh therewith.

(i) 46 E. 3. 33. 47 E. 3. 21. 21 H 6. 28. b. 33 H. 6. 50. 29 Ass 8. Pl. Com. Count. of Leic. case. 44 E. 3. 1. & 25. 12 R. 2. Liv. 28. 2 H. 7. fol. 14.
(a) 1 H. 4. 6. b. 37 H. 8. Estop. Br. 218. 7 E 6. lib. 222 Scurfields case. Tr. 8. Ja. in cur. Ward. 23. E. Dier 377. 28 H. 8. Br. tit. Livery 56.

Note, that a livery is in nature of a restitution, which is to be taken favourably: for if y be made of a Manor cum pertinentiis, the heir shall thereby have the advowson ap- ant, otherwise it is in Grants by Letters Patents.

41 E. 3. 5. 5 E. 6. 27 a. f. 48. Pl. Com 252. 20 El. Dier 360.
‡ 10 Co. 62. 64. a.

Since the time that Littleton wrote (c) there is a Court of Wards and Liveries erected by thority of Parliament concerning the order of the Kings Wards &c. to be holden before the ter of the Wards, and the Council of that Court appointed by those Acts. This hath made

(c) 32 H. 8. 46. 33 H. 8. cap. 21.
‡ 4 Inst. 188.

made such a manifold alteration, as were too long here to be inserted, and doth belong to ther Treatise mentioned in the Epistle of the jurisdiction of Courts, where it were necessa that the true jurisdiction of that Court should be set down, a matter of no great difficulty, sin it began so late by authority of Parliament. And since Littletons time, (d) there is a right p statable statute made concerning the finding of Offices and other things, not only concerning Kings Wards, or their rights and possessions, but some other provisions very beneficial for t subject, in all to the number of 12. (e) First that such persons as held for term of years, by copy of Court Roll, or have any rent, common or profit apprender out of any lands found in office, whereby the King is intituled to the wardship of the lands or tenements, or to the forfe ture of the lands or tenements upon attainder of treason, felony, præmunire, or any other fence, yet may they have, hold, enjoy, and perceive their several estates, interests, and profits, though they be not found in the office. And this being a beneficial Law the estates of ten by statute staple, Merchant, and elegit, and Executors that hold lands for payment of debts taken to be within the benefit of the clause: (f) and so is a doubt in 14 El. Dyer cleared.

2. Where it is found, that the heir is of fewer years than in truth he is, he shall not be cluded hereby, (g) but every such heir at his very full age may prosecute a writ of ætate pr banda, and sue his Livery or ouster le maine: in which case he had no remedy by the Comm Law.

(a) 3 Where one person or more be found heir, where another person is heir, the party griev ed had no remedy.

4. Or where one person or more be found heir in one County, and another person or pers found heir in another County, there could have been no interpleading.

5. Or if any person be utterly found by office Lunatick, or Ideot, or dead, the party griev ed may traverse the said offices, and you may read in Kens case how the office shall be tra versed upon this Act.

(b) 6. Where it is untruly found by office that any person attainted of treason, felony, or pr munire is seised of any lands, &c. the party grieved having just title of Freehold, shall have h travers or Monstrans de droit (without being driven by this double matter of Record to his p tition of right as he was before this statute) which is much more speedy than the petitionar upon the petition there be four writs of search, and every one must have 40 days before serving, and now but two writs of search.

7. Where an office is found by these words or the like quod de quo vel de quibus tenemen prædicta tenentur, juratores præd' ignorant, or holden of the King per quæ servitia juratores ign rant, it shall not be taken for an immediate tenure of the King in chief, but in such cases mes inquirendum to be awarded as hath been accustomed of old time. This branch hath been h (d) expounded, for if the first office find a tenure of the King per quæ servitia, &c. yet if upon t Melius inquirendum the tenure be found of a subject, the first office hath lost his force per sens hujus statuti, and need not be traversed, and the melius, &c. is in nature of the Diem clausit ext mum or mandamus, &c. and this was but a declaration of the ancient common Law, as by t words of the statute (as hath been accustomed of old) it appeareth; but if upon the melius it found again as uncertainly as before is said, then it is in judgment of law a tenure in capi and so it was before the making of this act, and so are the books that speak hereof to be intru ed; but if upon the melius a tenure be found of the King Ut de manerio per quæ servitia, & it shall be taken for Knights service.

8 Where it is found that lands, &c. are holden of the King immediately, where in truth the are holden of a common person and not of the King immediately, and that heir is with age, such heir within age shall have his traverse, &c. which he could not have had by the Com mon Law.

9. The mean Lords of whom the lands are holden which the King hath by his prerogati during the minority of the heir shall receive and take such Rents as are due unto them by hands of such of the Kings officers as receive the profits of the same lands, where before th act, the Lords used to spare the Rents due, &c. during the Kings possession, and after ill sued, charged the heir with all the arrearages.

10. There is a provision for offices found before the statute or before the 20. day of May next after the act.

11. A special clause is, that a Scire fac' shall be awarded upon every traverse by force of th act, and where the party was put to his petition, there upon the traverse there shall be th writs of search granted.

12. And lastly if judgment shall be given against the King upon a traverse by vertue of th act, all former rights appearing of Record are saved to the King. But albeit these points a most necessary to be known, yet let us now return to Littleton.

Littleton warily and materially (treating of a common person) saith tenus de luy holden him, for he shall have nothing in ward but that which is holden of him. But the King by pri

‡ 9 Co. 16.
(d) 2 E.6. ca.8.

(e) 4 E.4.23. 33 H.8.tit. entre congeabl. Br.125.
‡ 6 Co. Molin & Wheeler case.

(f) 14 El. Dier fo.319.

(g) 5 Mar. Dier. 156.

(a) 22 E.3. 31. 38. 9 H.6.18. 12 E 4.16. 30 Ass. 28. lib.4. fo.56. & 60. Sadlers case. Stanf. prerog. 85.b. 52.5 E.4.4. 16 E.4.4. 1.H.7.14. 8 H.7.11. F.N.B.262. 12 R.2. Livery 28. F.N.B 233. Lib.7. fo.44 45. Kens case.
‡ 8 Co. 72.
(b) 4 E.4.23. 10 H.6.19. Lib.4 f.56. &c. Sadlers case. 32.H.8 entre Cong. Br.125. 14 E.3.c.14.
(c) Vid. lib.6.f 6. Wheelers case.

(d) 12 El. Dier. f.292 a Li.8.f.168. Paris Stoughters case.
‡ F.N.B.251.

13 Eliz. Dier 306.
4 H.6.13. 10 H.4.2 b.
‡ 4 Co. 8.

15 E.4 12. 46 E.3.12.
21 H.6 11. 2 H 7.3.
‡ Sid.301.

rogative shall not only have such lands and tenements which (as hath been said) the heir of Tenant by Knights Service in capite holdeth of others, but such inheritances also as are holden at all of any, as Rent Charges, Rent Seek, Fairs, Markets, Warrens, Annui= s, and the like; and so is the law clearly holden at this day, as it hath been resolved; and so erience teacheth, that the King by his prerogative given to him by the ancient common shall have those inheritances not holden, and so the quære made by (c) Stanford is cleared made without question. (c) Stanf. prær fo. 8.

The Law is changed since Littleton wrote in many cases both for the mariage of the body, for the wardship of the lands, and a far greater benefit given to the Lords than the Com= n Law gave them, and some advantage given to the heirs, which before they had not, which ll be touched briefly.

If the Father had made an estate for life or a gift in tail of lands holden by Knights ser= to his eldest son, or other heir apparent within age, the remainder in fee to any other, and d, the heir should not have been in ward, for this was out of the Statute of Merlebridge. t at this day the heir shall be in that case in ward for his body, and a third part of his nd. 8 Co. 102. Merlebridge ca. 1. Pl. com. 82. 27 H. 10. 33 H 6. 14.

(a) So if the Father had infeoffed his eldest son within age and a stranger and the heirs the son, and died, the son should have been out of ward; but at this day he shall be in ward his Body, and for a third part of his Moiety. (b) So if the father had infeoffed any of younger sons or others for the making of his wife a Joynture, or for the advancement his Daughters, or for the payment of his Debts, and after infeoff and convey the land his heir and died, his heir within age, his heir should not have been in ward, because he s bound by the Law of Nature and Nations to provide for them, but now in all these s the heir shall be in ward for his body, and a third part of the Land, and all this grow= by construction upon the Statute of 32 and 34 H 8. (c) But if either the eldest son, or any the younger sons purchase lands of his father which are holden by Knights service, bona fide the reasonable value, this is out of those statutes, and the heir shall neither be in ward, nor Primier seisin. (a) 31 E. 3. Collusion 29 33 H. 6 14. (b) 33 H. 6. 14 27 H. 8. 7. Lib. 6. fo. 76. 77. in George Cursons case. 10 Eliz. 260. 3 El 193. 20 El. 361. 19 Eliz. 276. 5 Marie 155. ‡ 2 Co 93 b. (c) Lib 8. f. 83. Leonard Loveys case.

And in all the cases abovesaid, (for example) if a feoffment be made to the use of his wife for , or to the use any of his younger sons for life, or to the use of some persons for life for pay= nt of debts, and upon all these estates a remainder is limited over, if the wife or tenant for die in the life of the father, (d) or if it be conveyed to the use of the wife or younger children fee, or fee tail, or in fee for the payment of debts, and these lands are conveyed away in the time of the father, after the decease of the father no wardship, &c. accrueth by force of any of the statutes, for such estates must continue till the title of wardship do grow. (d) Lib. 2. fo. 91. Bing= hams case lib. 6. ubi supra 84. Lib 8. fo. 165. Digbyes case.

(e) If the Father convey his lands holden by Knights service either of the King or of any an Lord to his middle son in tail, the remainder to the youngest son in fee, and dieth, the eld= being within age, and the King or Lord seize the body and two parts of the land, if the ddle brother die without issue, the King or the Lord shall not have any benefit of the statute inst him in remainder, for the statute was once satisfied, and the statute extendeth not to n in remainder. (e) 14 Eliz Dyer 308. 3 Mariæ Dyer 130. Lib. 2. fo. 93. 94 Bing= hams case, & North-cots case. Lib. 10. f. 80. b. Leonard ‡ F. N. B. 269. a.

(f) If there be a grandfather, father, and divers sons, and the grandfather in the life of the ather convey his lands holden by Knights service to any of the sons, this is out of the sta= e of 32 H. 8. and if the grandfather die, there is neither wardship nor Primer seisin due, For Father hath the immediate care of his sons, but if the Father be dead, then the care of m belongs to the grandfather, and then if the grandfather convey any of the lands to le by the sons, it is within the said statute: (g) and a conveyance to the use of any of his col= eral blood, which is not his heir apparent is out of the said statute. And so are conveyances her by the Father or Mother or to the use of bastard children out of the statute, for qui ex mnato coitu nascuntur, inter liberos non computentur. And the Preamble speaketh of lawful nerations. If a man seised of lands holden in Socage convey them to the use of his wife or of s children, or payment of his debts, and after purchase lands holden by Knights service in pite, and dieth his heir within age, the King shall have no part of the Socage land. (h) But n that case he had by his will in writing devised his Socage lands in fee, and after purcha= lands holden in capite, and dieth, the King shall have so much of the socage land as will be a full third part of all. The benefit that grew to the subject by those acts of Parliament, re, that tenants in fee simple might devise their lands by their last wills in writing in such nner and form, as by the said acts appeareth. Also that the Father might infeoff his eldest or other heir lineal or collateral of his lands holden by Knights service, and two parts of lands shall be out of ward. And in * Mights case you shall read excellent matter of estates de upon collusion. (g) Lib. 10 fo. 83. Leon. Lovey's case 18 Eliz. Dyer 385. (h) Leon. Loveys case. ubi supra. Butler & Ba= kers case lib. 3. f. 25. &c. ‡ 8 Co. 83 * Lib. 8 fo. 163. Mights case.

And both the statutes of 32 and 34 H. 8. concerning Wills and Wardships are many ys prejudicial to the Heirs, as taking one example for many. If Tenant by Knights service ‡ 2 Co. 25. b.

service make a feoffment in fee to the use of his wife and her heirs, or to the use of a younger son and his heirs, or wholly for the payment of his debts. In these cases although nothing or all of the lands so holden descend to the heir, but he is disherited of the same, yet his body shall be in ward: but this for a little taste may suffice, more hereof you may read in my Reports in the several Cases noted in the margent.

‡ 6 Co. 5. Leon. Loveys case ubi supra. 22 Eliz. Dyer 367. 32 E. 3. Gard. 61. 2 H. 5. 4.

¶ *Pleine age.* Full age regularly is one and twenty years.

¶ *Entendment del ley.* Entendment i.e. intellectus, the understanding or intelligence of the Law. Regularly Judges ought to adjudge according to the common intendment of Law.

‡ 6 Co. 20. ‡ Cro. Car. 112. ‡ Ante 73. a. ‡ Post. 314. b. 10 H. 6. 8. 21 E. 3. 33. a. 27 H. 8. fo. 10. ‡ 10 Co. 109.

By intendment of Law every Person or Rector of a Church is supposed to be resident upon his Benefice, unless the contrary be proved.

Of common intendment one part of a Manor shall not be of another nature than the rest.

Of common intendment a Will shall not be supposed to be made by collusion. In facto quod ex se habet ad bonum & malum, magis de bono, quam de malo lex intendit. Lex intendit vicinum vicini facta scire. Nulla impossibilia aut inhonesta sunt præsumenda, vera autem & honesta, & possibilia. Lex semper intendit quod convenit rationi. As in this case, the Gardian shall have the custody of the Land until the heir come to his full age of one and twenty years, because by intendment of Law the heir is not able to do Knights Service before that age, which is grounded upon apparent reason. There note that the full age of a man or woman to alien by demise, let, contract, &c. is one and twenty years, the Civil Law five and twenty years, for then the Romans accounted men to have plenam maturitatem, and the Lombards at eighteen years.

Vide Brit. fo. 165.

¶ *Si le heire ne soit marie al temps del mort de tiel Auncester, &c.* Auncester is derived of the Latin word antecessor, and in law there is a difference between antecessor and prædecessor. For antecessor is applyed to a natural person, as I. S. & antecessores sui, but prædecessor is applied to a body Politick or Corporate, as Episcopus London & prædecessores sui. Rector de D. & prædecessores sui, &c.

Glanv. lib. 7. c. 1. Mirror ca. 5. Sect. 2. Britton fol. 168. b. 39 H. 6. c. 2.

¶ *Mes si tiel tenant devie son heire female esteant del age de* 14. *ans, &c.* And the reason as I find in Antiquity, wherefore the Law gave the mariage of the heir female if she were within the age of fourteen, & that she should not marry her self, was pur ceo que les heires females de nostre terre ne se marieront a nous enemies, & dount li nous coviendra lour homage prendre, si eux se puissent marier a lour volunt. This is a special age for an heir female to be out of ward if she attain unto it in the life of her Ancestor, for at that age she may have a Husband able to do Knights Service. A woman hath seven ages for several purposes appointed to her by Law: as, seven years for the Lord to have aid pur file marier, nine years to deserve Dower, twelve years to consent to mariage, until fourteen years to be in Ward, fourteen years to be out of Ward, if she attained thereunto in the life of her ancestor; sixteen years for to tender her mariage if she were under the age of fourteen at the death of he ancestor, and one and twenty years to alienate her Lands, Goods, and Chattels.

35 H. 6. 40. Brac. lib. 2. cap. 37. ‡ 1 Rol. 342. ‡ 6 Co. 73.

A man also by the Law, for several purposes hath divers ages assigned unto him viz. twelve years to take the Oath of Allegiance in the Corn or Leet: fourteen years to consent to mariage, fourteen years for the Heir in Socage to choose his Gardian, and fourteen years also accounted his age of discretion: fifteen years for the Lord to have aid pur fitz Chivaler: under one and twenty to be in ward to the Lord by Knights Service: under fourteen to be in ward to Gardian in Socage: fourteen to be out of ward of Gardian in Socage, and one and twenty to be out of ward of Gardian in Chivalry, and to alien his Lands, Goods, and Chattels.

‡ 1 Rol. 137, 138. 34 E. 1. Stat. 3. Glanvil. 7. c. 9. Dier 5 Marie 162. Brac. l. 2. c. 37. F. N. B. 202.

¶ *Mes si tiel heire female soit deins lage de* 14. *ans & nient marie, &c. Le Seignior avera la gard del terre.* But put case that the Lord cannot have the wardship of the land, as if the Lord before the age of fourteen granteth over the wardship of the body, in this case the grantee of the body cannot enjoy the benefit of the two years, because he cannot hold ober the land, and the lord which hath the wardship of the land only shall lose the benefit of the two years, because he hath the lands only and cannot tender any mariage, therefore in this case the heir female shall enter into her land at her age of 14. years. So if a tenant holdeth of one Lord by priority, and of another by posteriority and dieth, his heir female within the age of 14 years, the Lord by posteriority shall have the lands but until her age of 14 years, because the mariage belongeth not to him. Also if the Lord marieth the heir female within the two years, her husband and she shall presently enter into the lands: for Cessante causa, cessat effectus: & cessante ratione legis, cessat beneficium legis.

35 H. 6 52. tit. gard. 71. Stanford. 3. b. F. N. B. 256 259. 35 H. 6. 40.

Britt. 169. & 35 H. 6 52.

If the Lord tender a convenable mariage to the heir within the two years, and the mariage where within those two years, the Lord shall not have the forfeiture of the martage, for the statute giveth the two years only to make a tender. 35 H.6.52. 35 H. 6. tit: gard. 71. Lib. 6. f. 71 1. the Lord Darcies case.

¶ *Et si le seignior deins les dits* 2. *ans ne luy tender tiel mariage, &c. donque el al del dits* 2. *ans poet entrer, & ouste le seignior.* This is so evident, as it needeth no declaration.

F.N.B. 143.

¶ *Mes si tiel heire female soit Marie deins lage de* 14 *ans en la vie son Ancester, & Ancester devie el esteant deins age de* 14 *ans, le Seignior navera la gard forsque de la* ‡ 8 Co. 172. *re jesque al age de* 14 *ans, &c.* Note, albeit the heir female be maried at the age of twelve years in the life of her Ancestor, (at which age she may consent to Matrimony) to a man of full age, that is able to do Knights service, yet if the Ancestor die before her age of fourteen, the Gardian shall have her land until her age of fourteen, because (as hath been said) it is the time appointed by the common law. And so if the heir male be maried in the life of the Ancestor at her age of fourteen years, and the Ancestor dieth, the Lord shall have the land until the Ward cometh to the age of one and twenty.

¶ *Car ceo est hors del case del dit statute, intant que le Seignior ne poet tender mage a luy que est Marie.*

Natura non facit vacuum, nec lex supervacuum. The law doth never enforce a man to do a vain thing.

And where the said stat. of W. 1. giveth unto the Lord the said two years, thereby is implied that if he dieth within the two years, his Executors or Administrators shall have the same as when the statute vesteth an Interest in the Lord, the law giveth the same to his Executors or Administrators. Then put case, That a Lord hath the Wardship of the body and land of an heir female, and maketh his Executor, and dieth before her age of fourteen years, whether the Executor shall have the two years, because the Executor is not Lord: But I take it, the Executor having the Wardship of the body and land, shall in that case have the two years, for that they were vested in the Lord. 27 H.8.3.11 E.3.Exec. 77. 4 E.3.55. 28.Ass.p.7. ‡ 8 Co. 163.

It is further provided by the said statute, that if the Lord tender a convenable mariage to the heir female, within the said two years, and the heir female refuseth, then the Lord shall hold the land until her age of one and twenty years, and further until he hath levied the value of her mariage. But if the Lord doth not tender a marige within the two years, he shall lose the value of the mariage, and content himself with the two years value. 31 Ass. p. 26. ‡ 2 Cro. 151. Lib. 6. fol. 71 L. Darcies case. ‡ 11 Co. 67. ‡ Post. 369. a.

¶ *Car devant le dit statute, &c. sicome apiert per le rehearsal & parols de le dit statute.* Nota, the rehearsal or preamble of the statute is a good mean to find out the meaning of the statute, and as it were a Key to open the understanding thereof. The tender of a mariage of an heir female before the age of fourteen is void, which must be understood where the Lord may hold the land for the said two years, for then the statute appointeth the time of the tender, but where the Lord cannot have the two years, he may tender a mariage to the heir female at any time after the age of twelve and before fourteen, for so he might have done at the Common Law. 35 H.6. fol. gard. 71. 35 H.6. fol. gard. 71. Lib. 6. fol 71. Lord Darcies case, Britton 169.

Sect. 104.

I NOte, que le pleine age de male & female solonc le common parlance, est dit lage de 21 ans. Et lage de discretion est dit lage de 14 ans, car a tiel age le enf. que est marie deins tiel age a feme, puit agreer

NOte that the full age of male and female according to Common Speech is said the Age of 21 years. And the age of discretion is called the age of 14 years. For at this age, the Infant which is maried within such age to a Wo-

OF full age, which is the age of one and twenty, and of the age of discretion, which is the age of fourteen somewhat hath been spoken before. But now to the point of agreement or disagreement in this case The time of agreement, or disagreement, when they marry Infra annos nubiles, is for the woman at 12. or after, and for the man, at fourteen or after, and there need no new mariage, if they so agree, but disagree they cannot before the said ‡ Ante 78 b.

5. Mar. gard. Br. pl. ult. 39 E.3.32.33. prær. reg. cap. 6. Tr. 24 Eliz. Rot. 842. in bank le roy. Banisters case. ‡ 3 Inst. 88.

said ages, and then they may disagree and marry again to others without any divorce : and if they once after give consent, they can never disagree after. If a man of the age of fourteen marry a woman of the age of ten, at the age of twelve he may as well disagree as she may, though he were of the age of consent, because in contracts of Matrimony either party must be bound, or equal election of disagreement given to both, and so e converso, if the woman be of the age of consent, and the man under.

‡ 5 Co. 98.
‡ 4 Co. 29. ‡ 1 Rol. 341. b
‡ 3 Inst. 89. ante 47.
‡ Post. 352. 363.

a tiel mariage, ou disagreer.

man, may agree or disagree to such mariage.

Sect. 105.

13 E. 1. gard. 137. Brit. fol. 169. acc.

IT is a maxim in law, Quod Dominus non maritabit minorem in custodia sua nisi semel. And another saith, Si semel legitime nupt'fuer', &c. postmodum non tenebuntur sub custodia dominorum esse. Albeit this mariage is de facto, and not de jure, and though the disagreement dissolveth it ab initio, yet the Lord shall never have the mariage of him.

Glanvil lib. 7. cap. 12.

27 H. 6. gard. 118.

And so if the Gardian marieth his ward to a woman and after the mariage is dissolved by reason of a precontract, yet the Gardian shall never have the mariage of the ward again.

27 H. 6 gard. 118.

But if one ravisheth a ward from the Lord and marrieth him within the age of consent, in that case if the Lord taketh again his ward, and he at the age of consent disagreeth to the mariage, the Lord shall have the mariage of him, for he never had it before.

27 H. 6. gard. 118.

B. F. N. 243.

So likewise, if the Ancestor marrieth his heir apparent infra annos nubiles, and dieth his heir within age, the ward disagreeth, the Gardian shall have the wardship of him.

ET si la Gardein en chivalrie marie un foits le garde deins lage de 14. ans, a un feme, & puis sil al age de 14. ans disagree a le mariage, il est dit per ascuns, que ienfant nest pas tenus per le ley destre auterfoits marie per son Gardeine, pur ceo que le Gardeine avoit un foits le mariage de luy, & pur ceo il fuit hors de son garde, quant al garde & son corps. Et quant il avoit un foits le mariage de luy & un foits fuit hors de son garde, il navera plus avant le mariage de luy.

AND if the gardian in Chivalry doth once marry the Ward within his Age of 14 years to a woman, and if afterward at his age of 14 years he disagree to the marriage, it is said by some, that the Infant is not tied by the Law, to be again married by his Gardian, for that the Gardian had once the mariage of him, and because he was once out of his ward, as to the ward of his body. And when he had once the marriage of him, and he was once out of Wardship, he shall no more have the marriage of him.

7 H. 6. 11.

The same law it is in the same case, if the wife dieth before the age of consent, the Lord shall have the mariage of the heir.

And so note a diversity when the ward is married by the Ancestor or by a Ravisher, & by the Gardian himself : (a) For if the Ancestor marry his heir appearent infra annos nubiles and dyeth ; in this case if the mariage be dissolved by disagreement, either of the ward or of the wife, the Gardian shall have the mariage of him. (b) And so it is if a Ravisher marry a woman infra annos nubiles, and the mariage is dissolved, ut supra, the Gardian shall have the mariage. If the heir male in ward of the age of ten years be maried without the consent of the Lord he may tender unto the heir infra annos nubiles a mariage, albeit he be so maried, and if he refuse, and agree to the former mariage, the Lord shall have the forfeiture of his mariage, as hath been holden : But otherwise it is (c) (saith Littleton) where the Gardian himself marieth the ward, ut supra : And the reason of the diversity is, because in this case the Gardian had once the mariage of him, but so had not he in either of the other cases, and it is a Maxim in Law, Quod Dominus non maritabit pupillum nisi semel.

(a) 30 E. 1. gard. 156. 12 E. 1. gard. 138. 21 E. 3. 19. 20 E. 3. gard. 41. Temps E 1. ibid. 128. 35 H. 5. 45. 7. H. 6. 11. Vide prær. Reg. cap. 6 13 H. 3. gard. 147. Stanf. prær. 26. 27.
(b) 27 H. 6. gard. 118. F. N. B. 143 m. 19 E. 2. Judgment 123. 45 E. 3. 16.
(c) 47 E. 3. tit. action sur le statute, 38. and the books aforesaid.

le appeareth upon conſideration of all the books afozeſaid, that where the Anceſtoz marieth heir apparent within the age of conſent, and dieth, the Infant ſtill being within the age onſent the Lozd may take the Infant (if he will) into his poſſeſſion, in reſpect the infant y diſagree to the mariage, and if the Infant be detained from him, he ſhall recover him in it of Raviſhment of ward, and thereupon have the Infant delivered to him. (d) But if the eſtoz marieth his heir apparent infra annos nubiles, and dieth his heir being infra annos un-s, and after age of conſent the heir agreeth to the mariage, neither the King noz the Lozd ll have the mariage, foz now it is a mariage ab initio, and there need no other mariage.

‡ 9 Co. 91.
(d) 7 H 6 11. adiudge in the book at large.

*Sect.*106.

E ſm meſme le manner eſt, ſi Gardein luy marie, e feme devie eſteant fant deins lage de . ans, ou xxi.

IN the ſame manner it is if the Gardian marry him and the wife die the Infant being within the age of 14. years or 21.

¶ This Littleton addeth becauſe he ſpake in the caſe next befoze of a diſagreement by the Infant, here he ſaith, that if the wife die, the Infant being within the age of conſent.

Sect. 107.

ET que tiel enfant poit diſaer a tiel marriage, ant il vient al age xiv. ans, il eſt ve per les paroix ſtatute de Mer- Cap. 6. que iſſint

De dominis qui maritaverint illos quos habent in cuſto- ſua, villanis, vel aliis, ſicut burgenſibus ubi piſ- gentur, ſi talis hæres fuerit infra 14. *annos, & ta- tatis quod matrimonio conſentire non poſſit, tunc ſi ntes illi conquerantur, dominus amittat cuſtodiam uſque ad ætatem hæredis, & omne commodum quod receptum fuerit convertatur ad commodum hæredis ætatem exiſtentis, ſecundum diſpoſitionem paren- propter dedecus ei impoſitum. Si autem fuerit* 14. ans tra, *quod conſentire poſſit, & tali matrimonio con- rit, nulla ſequatur pæna.*

ANd that ſuch Infant may diſagree to ſuch mariage when he comes to the age of 14. years, it is proved by the words of the ſtatute of Merton, cap. 6. which ſaith thus.

¶ *Et que tiel enfant poit diſagreer, &c. il eſt prove &c.* Note the time of diſagreement is ſet down by act of Parliament, and ſo obſerved by Littleton, who ſeeks no other proof therein than by the Law of England.

Merton, cap. 6.

¶ *Ubi diſparagentur.* Diſparagement, diſparagatio cometh of the Verb diſparago, and that of diſpar, and ago.

Now it is neceſſary to be underſtood what diſparagements there be foz the which the heir may refuſe.

And of ſuch diſparagements there be four kinds. The firſt propter vitium animi, as an Ideot, non compos mentis, a lunatique, &c. The ſecond propter vitium ſanguinis, as firſt a Villain. 2. Burgenſis. 3. The ſon oz daughter of a perſon attainted of treaſon oz felony, albeit pardoned, foz the blood is corrupted. 4. A Baſtard. 5. An alien oz the child of an Alien. Burgenſis is a man of trade, as an Haberdaſher, a Draper,

F.N.B. 252.b. Bract. lib. 2. fol. 91. Britton f. 169. Fleta. lib. 1. cap. 12. Mirror cap. 2. Sect. 17 Rot. Parl. 18 E. 1. fo 9. The daughter of Nevil married to the ſon of Tho. of Weyland after his attainder.

iſſint eſt prove per me le eſtatute, que diſparagement eſt lou celuy que en garde eſt maeins lage de riv.

And ſo it is proved by the ſame ſtatute, that there is no diſparagement but where he which is in ward is maried within the age of 14. years.

Draper, or the like, (and this agreeth with the civil law, Patricii cum plebe matrimonia ne contrahant,) whereof Glanvil speaketh thus, Si vero fuerit filius burgensis ætatem habere tunc intelligitur quando discrete sciverit denarios numerare, & pannos ulnare & alia paterna negotia similiter exercere.

‡ 8 Co. 163. The third, propter vitium corporis, at first de membris, having but one hand, one foot, one eye, &c. Secondly, deformity, as to look a squint, a cripple, halt, lame, decrepit, crooked, &c. Thirdly, Privation, as blind, deaf, dumb, &c. Fourthly, Disease horrible, as leprosie, palsie, dropsie, or such like diseases. Fifthly, great and continual infirmity, as a consumption and such like. Sixthly, Impotency to have children in respect either of age past children, or so tender years as there is too great disparity, or for natural disability or impediment or such like. Seventhly, deflowred of her Virginity.

1 E. 6. cap. 12. The fourth kind of disparagement was propter jacturam privilegii, &c. as to marry the heir to a widow whereby he should by reason of the Bigamie have lost the benefit of his clergy, whereby he might save his life, but now the exception of Bigamie in that case is ousted by the (d) Statute. And Littleton saith, that there be many other disparagements which are not specified in the said statute, for those two mentioned are put but for example. In a word, it must be contens maritagium absque disparagatione.

(d) Vide Sect. 109. 3 E.N.B. 149.

¶ *Si talis hæres fuerit infra* 14 *annos, & talis ætatis quod matrimonium sentire non possit, &c.* Note albeit the ward where he is disparaged may disagree at his age of fourteen years, yet the law doth so abhor the odious dealing of the Gardian, to whom the custody of the heir is committed, and his horrible profanation of honourable marriage, the only ligament of mens inheritances, as it inflicteth a great punishment upon the Lord in this case, albeit the marriage be not perfect, but avoidable by disagreement.

¶ *Tunc si parentes illi conquerantur.* Littleton in the next Section expounds these words in this manner, viz. Si parentes conquerantur, i. e. Si parentes inter eos lamentent quæ est tant a dire, que si les Cosens de tiel infant ont cause de faire lament' ou complaint pur hont fait lour Cosen issint disparage, que est in manner un hont a eux. Parens est nomen generale omne genus cognationis. See more of this in the next Section.

¶ *Dominus amittat custodiam illam usque ad ætatem hæredis & omne commod' quod inde receptum fuerit convertatur ad commodum hæredis, &c.* Here followeth the penalty.

First, amittat custodiam, that is the whole benefit of the wardship. But in this case if the Gardian hath granted the wardship of the land to another bona fide, and after, the heir is disparaged, the Grantee shall not forfeit his Interest, for the Stat. is Dominus amittat custodiam.

Secondly, Et omne commodum quod inde receptum fuerit convertatur ad commodum hæredis secundum dispositionem parentum. These words are expounded by Littl. which need no further explanation. Now where Readers upon this statute have put a case, that if the Tenant have issue a daughter, his wife enseint with a son and dieth, the Lord doth disparage the daughter before the age of twelve years, the son is born, the daughter disagrees, the son dieth, the daughter within the age of fourteen; she shall be in ward again. This case is not warranted by this statute, for this statute extends not to the heirs female.

Vide the second part of the Institutes Merton cap. 5 & 35 H. 6. 53. ‡ 9 Co. 12. 7. If the Tenant make a lease to A. for life, the remainder to B. in fee, the Tenant for life renders upon condition, B. dieth his heir within age, the Lord disparages the heir, Tenant for life entreth for the condition broken and dieth, the heir shall be out of ward, for that he claimeth as heir to one man. But if after the disparagement, lands descend from another ancestor to the ward so disparaged, he shall be in ward for those lands.

If two Joyntenants be of a ward, and the one disparageth the heir, both shall lose the wardship, for the words be & omne commodum, &c.

¶ *Si autem fuerit* 14 *annorum & ultra, &c. nulla sequatur pars.* By which it appeareth (as Littleton observeth) that there is no disparagement but when the ward is maried within the age of fourteen.

‡ 8 Co. 165. Eritton fol. 169. acc.

Sect. 108.

‡ 2 Inst. 1. 9 H. 3. ¶ *Estatut de magna Charta.* Though it be in form of a

¶ Nota que il soloit estre question, coment ceux

Note, it hath been a question, how

rolx ſerront entenz, Si parentes conerantur, &c. * Et ſemble a aſcuns que nſideront leſtatute Magna Charta que t, Quod hæred' ritentur abſque diſagatione, &c. Sur el cel Statute de erton ſur tiel point foundue, Que l action poſt eſtre s ſur cel Ste, entant que il fuit unques view oye, que aſcun ion fuit poſt ſur ſtatute de Merton r cel diſparagent enuers le Garne pur ceſt matter andit, &c. Et ſi un action puiſſoit e pleſe ſur tiel tter, il ſerra enduе aſcun foits e miſe en ure. t nota, que ceux pa, ſerront entenz, Si parentes conerantur, id eſt, ſi partes inter eos lamentur, que eſt taunt re, que ſi les couz de tiel enfant cauſe de faire lantation ou comint enter eux pur hont fait a lour uſin iſſint diſpaze, quel eſt en maun hont a eux, nques puit le plain couſine a que

underſtood. *Si parentes conquerantur.*) * And it ſeemeth to ſome who conſidering the ſtatute of *Magna Charta*; which willeth, *Quod hæredes maritentur abſque diſparagatione, &c.* Upon which, this ſtatute of *Merton* upon this point is founded, That no action can be brought upon this ſtatute, inſomuch as it was never ſeen or heard, that any action was brought upon the ſtatute of *Merton* for this diſparagement againſt the Gardian for the matter aforeſaid, &c. And if any action might have been brought for this matter, it ſhall be intended that at ſometime it would have been put in ure. * And note that theſe words ſhall be underſtood thus, *Si parentes conquerantur, id eſt, ſi parentes inter eos lamententur*, which is as much to ſay as if the Couſins of ſuch infant have cauſe to make lamentation or complaint amongthemſelves, for the ſhame done to their Couſin ſo diſparaged, which in manner is a ſhame to them, then may the next Couſin to whom the

Charter, yet being granted by aſſent and authority of Parliament, Littleton here ſaith it is a ſtatute. Vid. Lib. 8. the. Princes caſe.

This Parliamentary charter hath divers appellations in law. Here it is called Magna Charta, not for the length or largeneſs of it (for it is but ſhort in reſpect of the Charters granted of private things to private perſons now adays being (Elephantinæ Chartæ) but it is called the great Charter in reſpect of the great weightineſs and weighty greatneſs of the matter contained in it in few words, being the fountain of all the fundamental laws of the Realm; and therefore it may be ſaid of it, that it is magnum in parvo. ‡ Ante 73. b.

It is in our books called Charta libertatum, & Communis libertas Angliæ, or Libertates Angliæ. Charta de libertatibus, Magna Charta, &c. And well may the laws of England be called Libertates, quia liberos faciunt. Magna fuit quondam magnæ reverentia Chartæ. Bracton 414, & 291. Fleta lib. 2. cap. 48. & lib. 3. cap. 3. Mirror cap. 2. ſect. 18. Britton fol. 177. b.

This ſtatute of Magna Charta, is but a confirmation or reſtitution of the Common law, as in the Statute called Confirmatio chartarum, Anno 25 E. 1. it appeareth by the opinion of all the Juſtices; and in 5 H. 3. tit. Mord. 53. Magna Charta is there vouched, for there it appeareth, that King John had granted the like Charter of renovation of the ancient laws. 25 E. 1. 5 H. 3. Mal. 54. Math Paris 246 247. 248.

This ſtatute of Magna Charta hath been confirmed above 30 times, and commanded to be put in execution. By the ſtatute of 25 E. 1. cap. 2. Judgments given againſt any points of the charters of Magna Charta, or Charta de Foreſta are adjudged void. And by the ſtatute of 42 E. 3. c. 3. If any ſtatute be made againſt either of theſe Charters it ſhall be void. ‡ Dr. & Stud. 9. b. 25 E. 1. cap. 2. ‡ 7 Co. 36. ‡ Noy. 180. 42 E. 3. cap. 1.

¶ *Sur leſtatute de Magna Charta leſtatute de Merton eſt foundue ſur tiel*

tiel point, viz. Quod hæredes maritent' abſque diſparagatione,

¶ *Foundue.* So as Magna Charta is the foundation of ther Acts of Parliament. This Act extendeth as well to females as to males.

ǂ 4 Ioh. 14.

¶ *Nul action poet eſte priſe ſur cel ſtatute, intant que il ne unques fuit view ou oye, &c. Et ſi aſcun action puiſſoit eſte priſe ſur ceſt matter il ſerra intend a aſcun foits eſtre miſe in ure.*

lenheritage ne puiſt diſcender, enter & ouſter le Gardeine en Chivalrie. Et ſil ne voile, un auter couſin del enfant poit ceo faire, & les iſſues & profits prender al uſe del enfant, & de ceo render account al enfant, quant il vient a ſon plein age: ou autrement lenfant deins age poit enter luy meſme, & ouſter le gardein, &c. Sed quære de hoc.

inheritance cannot descend, enter and ouſte the Gardein in Chivalry. And if he will not, another Couſin of the Infant may do this, and take the iſſues and profits to the uſe of the Infant, and of this to render an account to the Infant when he comes to his full age, or otherwiſe the Infant within age may enter himſelf and ouſte the Gardein, &c. *Sed quære de hoc.*

ǂ Ante 11.a.
ǂ Sid. 170.
Vide Petitiones coram Domino rege in Parliamento, fol. 3. 18 E. 1.
39 H. 6. 39. per Aſhton
6 Eliz Dyer 229.
23 Eliz. Dyer.
Nullum breve derrore de judicio in 5. port, quia nullum breve repetitur. 3 E 3. 50.
11 H. 7. & 38.
Vid. leſtatute de Marlebridge cap. 17.
In cuſtodia parentum.

Hereby it appeareth how ſafe it is to be guided by judicial Preſidents the Rule being good, Periculoſum exiſtimo quod bonorum virorum non comprobatur exemplo. And as uſage is a good interpreter of Laws, ſo non-uſage where there is no example is a great intendment, that the law will not bear it; for ſaith Littleton, If any Action might have been grounded upon ſuch matter, it ſhall be intended that ſometime it ſhould have been put in ure. Not that an Act of Parliament by non Uſe can be antiquated or loſe his force, but that it may be expounded or declared how the Act is to be underſtood.

¶ *Si parentes conquerantur.* Of this ſufficient hath been ſaid before.

¶ *Si les Couſins.* Here Littleton expounds Parents to be his couſins, under which name of couſins Littleton includeth uncles and other couſins, who when the father is dead are *in loco parentum.*

¶ *Ont cauſe a faire lamentation, &c.* Note, if they have cauſe to make lamentation, it ſufficeth though they never complain.

¶ *Pur le hont fait a lour conſin.* For when their couſin is diſparaged in his marriage, it is not only a ſhame and infamy to the heir, but in him to all his blood and kindred.

¶ *Donques poit le procheine couſin a que le enheritance ne poit diſcender, enter, & ouſter le Gardein in Chivalrie.*

This is worthy the obſervation, for the words of the ſtatute are general, Secundum diſpoſitionem parentum, and the conſtruction thereof ſhall be according to the reaſon of the Common law, for the next couſin to whom the Inheritance cannot deſcend, ſhall enter and ouſte the Gardian, and ſhall be in place of a Gardian, as it is in caſe of a Gardian in ſocage.

¶ *Et ſil ne voile, un auter couſin del enfent poet ceo faire.* Still purſuing the reaſon of the Common Law in caſe of Gardian in ſocage.

¶ *Et les iſſues & profits prender al uſe del enfant, &c.* This is ſo Evident as it needeth no explication.

ǂ F.N.B. 253.a.
ǂ Plow. 525.

¶ *Ou auterment lenfant deins age poit enter luy meſme & ouſte le gardein.* If none of the couſins aforeſaid will enter, then the heir himſelf may enter. In all which the reaſon of the Common Law is purſued. But what if the heir be diſparaged, and the next of Kin doth enter, and when the heir cometh to 14 he agreeth to the marriage? yet ſhall not this give any advantage to the Lord, for that he had loſt the wardſhip before.

Sect.

Sect. 109.

¶ Of this sufficient hath been said before.

Item mults auters divers disparagements y sont, que sont specifies en mesme lesta-
. Come si l'heire que est en
st mary a un q̄ nad forsq̄
ee, ou forsq̄ un main, ou que
deforme, decrepite, ou ayant
ible disease, ou graund &
tinual infirmitie: Et (si soit
e male) si soit marry a feme
est passe lage denfanter. Et
ts auter causes de dispa-
ements sont, Sed de illis quæ-
car il est bon matter dap-
der.

ALso there be many and divers other disparagements, which are not specified in the same statute. As if the heir which is in ward be maried to one which hath but one foot, or but one hand, or which is deformed, decrepit, or having some horrible disease, or great and continual infirmity. And (if he be an heir male) if he be maried to a woman past the age of child-bearing. And there be other causes of disparagement, but inquire of them, for it is a good matter to understood.

‡ Ante 80. a.

Sect. 110.

ET des heires
males que sont
gs lage de 21 ans
s le mort lour an-
er nient maries, en
cas le Sñr avera
nariage de tiel heir,
vera temps & space
tender a luy conve-
ble mariage sans
parageñt deins ñ
emps de 21 ans. Et
aschaoir, que l'heire
tiel case poit eslier
poit ẽe mary ou nō,
s si le Sñr que est
el gardein en Chi-
ry a tiel heire ten-
covẽabl' mariage
ns lage de 21 ans
s disparagment, &
ceo refuse, & ne soy
rie deins le dit age

AND of heirs males which be within the age of 21 years after the decease of their Ancestor and not maried, in this case the Lord shall have the mariage of such heir, and he shall have time and space to tender to him covenable mariage without disparagement within the said time of 21 years. And it is to be understood, that the heir in this case may chuse whether he will be maried or no, but if the Lord which is called Guardian in chivalry tenders to such heir covenable mariage within the age of 21 years without dispa-

¶ *De tender a luy convenable marriage, &c.* But it is in the election of the Lord, whether for the single value the Lord will tender a marriage or no, for he shall have the single value without any tender.

Lib. 6. fol. 70. Lord Derbies case
Vid. Britton, fol. 169.
‡ 5 Co. 127.

And of this there needeth no other explication. The value of the mariage of such an heir is according to the valuation by lawful trial, or as much as another had before offered to give for the same without fraud and covin.

‡ 2 Rol. 594. 595.
‡ Sid. 313. ‡ Hob. 93. Merton, cap. 6. 18 E. 3. 18.
‡ Hob. case 124. & 280.

¶ *Le heire en tiel case poit eslier sil voit este marrie, ou non, &c.* And so on the other side, though there be a tender made of a covenable marriage without disparagement, yet the heir may refuse, for in every marriage there

there must be a free consent.

† 7 Co.3. † 6 Co. 73. ¶ *Si tiel heire.* That is, if such an heir to whom a tender hath been made by the Lord, and by whom a refusal hath been made; if such an heir afterwards marieth another within age, he shall forfeit the double value, but if he before any tender marieth himself within age, he shall pay but the single value of the mariage.

‡ 2 Co.173. Neither the single value nor the double value shall be recovered against the heir, but after his full age; but for both these the Lord hath a double remedy, viz. an Action as is aforesaid, or the Lord may retain the land after full age for his satisfaction of both, with this difference, that in the case of the single value the taking of the profits shall not be accounted parcel of the value, but as a gage or pledge till the heir do satisfie him of the single value; but in case of the double value, the perception of the profits shall be taken in satisfaction of the double value, for the statute of Merton which giveth the forfeiture saith, Dominus teneat terram, per tantum tempus quod inde percipere possit duplicem valorem maritagii; which words [de inde, &c.] prove that the taking of the profits shall go in satisfaction: but in case of the single value, until the heir doth satisfie the Lord of the same.

‡ 4 Co.81. ‡ Post. 203.a. Stat de Merton, cap.6. 2 E.2.ac sur lestat.43. 3 E.2.ibid.27. 16 E.3.ib.14 18 E.3.18. Temps E 1.ac.sur lestat. 43 E 3.21.27 H.8.4. Stat.de Merton,cap.7. 35 H.6 tit.Gard.71.Lib. 6.fol 71. Lord Darcies case.

No forfeiture of marriage is given by the said statute of Merton, of an heir female, as appeareth by the said Act, neither at the Common Law could the Lord have holden the land of the heir female after fourteen years for the value.

donques le gardeine avera le value del mariage del tiel heire male, mes si tiel heire luy mesme marie desins lage de 21 ans encounter la volunt le gardeine en Chivalrie, donqz le gardein avera le double value del mar̃ per force de lestat̃ de Merton avant dit, come en m̃ lestat̃ est comprise pluis a pleine.

ragement, and the he refuseth this, and do not marry himself wi in the said age, then t Gardein shall have t value of the marria of such heir male, if such heir marri himself within the a of 21 years against t will of the Gardein Chivalry, then the G dein shall have the do ble value of the ma riage by force of t statute of *Merton* foresaid, as in the same statute is more fully large compriſed.

Sect. III.

Lib.4 f.88 in Lutterels case, Lib 6.fol.20.a. Gregories case. 19 R.2.Gard.195. ¶ *Per Castle gard. Wardum castri, seu Castle gardum, seu Castri-gardum.* He that holdeth by Castle-gard, holdeth by Knights service, but not by Escuage, for Escuage is due when the King maketh a Voyage Royal out of this Realm (as hath been said) and the Tenant maketh default, but castle-gard is to be done within the Realm, & without any Voyage Royal.

F.N.B.271.d. Also a certain term is appointed for the service of the Tenant that holdeth by Escuage, but no certain term by law for him that holdeth by Castle-gard. Vide in the Title of Grand Serjeanty. Sect. Hereof come

¶ Item, divers tenants teignont de lour Seignios per service de Chivaler, & uncoz ils ne teignont per Escuage, ne paieront escuage, come ceux q̃ teignont de lour Seignioz per Castle-gard, cestascavoire, a garder un Tower del Castle lour Seignioz, ou un huis ou un auter lieu del Castle per reasonable garnishement, quant lour Seigni-

Also divers tenants hold of the Lords by Knights service, and yet they hold not by Escuage, neither shall they pay Escuage. As they which hold of their Lords by Castle-ward; that is to say, to ward a Tower of the Castle of the Lord, or a door or some other place of the Castle upon reasonable warning, when their Lords hear that the Enemies will come

s ayont que ene-
es voylent venir,
ſont venus en En-
eterre. Et en plu-
s autres caſes home
it tener per ſervice
Chivaler, & uncore
ne tient per eſcuage
payera eſcuage, ſi-
me ſerra dit en le
nure per Graund
erjeanty. Mes en
uts caſes ou home
nt per ſervice de
hivaler, tiel ſervice
ait al Seignior gard
mariage.

or are come in England. And in many other Caſes a man may hold by Knights ſervice, and yet he holdeth not by Eſcuage, nor ſhall pay Eſcuage, as ſhall be ſaid in the tenure by Grand Serjeanty. But in all Caſes where a man holds by Knights Service, this Service draweth to the Lord ward and mariage.

Caſtellani, or Conſtabularii caſtri for Keepers or Conſtables of a Caſtle. Vid. Mag. Chart. cap. 19. 20. W. 2. cap. 7. Bract. lib. 5. fol. 363. Fleta lib. 4. cap. 43. ‡ 4 Co. 88.

¶ *A garder un Tower del Caſtle, &c.* A Tower, or a Door or a Bridge, or a Sconce, or ſome other certain, part of the Caſtle, for the tenure muſt be certain. And this may be done by the Tenant himſelf or his Deputy. Magna Charta cap. 20.

¶ *Del Seignior.* For it cannot be of a Caſtle of another.

Lord and Tenant by Caſtle-gard the Lord granteth over his ſeignory to another, (a) the Caſtle-gard is gone becauſe the Grantee hath not the Caſtle. (b) For the ſame reaſon it is, that if one holdeth of me, as of my Manor of D. by fealty and ſuit of ‡ 2 Rol. 513. (a) Temps E. 2. tit. Aſſ. 399. 31 E. 1. tit. Aſſ. 441. (b) 17 E. 3, 65. 72. 4 E. 3 42.

urt, If I grant over the ſervice of this Tenant, the ſuit is gone becauſe the grantee hath the Manor. (c) But if the Caſtle be wholly ruinated, Si Caſtr' ſit penitus dirutum, yet the ure remaineth by Knights ſervice, and it goeth in benefit of the Tenant, as to the garding the Caſtle until it be reedified. But Ward and Mariage belongeth to the Lord in the mean e. For Littleton in the end of this Section putteth it for a general rule in all caſes where an holdeth by Knights ſervice it draweth Ward and Mariage. (c) Lib. 4. fol. 88. Lutterel. caſe. 3 H. 8. Bendloes, Capels caſes 4 E. 3. 55. ‡ 6 Co. 20.

If the Tenant make default in garding of the Caſtle, the Lord may diſtrein for it, and re- er ſatisfaction in damages.

¶ *Per reaſonable garniſhment.* This warning muſt be given by the Lord or ſome er for him, and the Tenant need not ſtir until he have ſuch warning.

¶ *Enemies.* Which is to be underſtood of any manner of Enemies whatſoever. And ugh Littleton ſpeaks of enemies, yet it ſeemeth that to keep a Caſtle in time of Inſurrection Rebellion (albeit in propriety of ſpeech Rebels are no Enemies) is a tenure by Knights ice. Vide Hill. 8 E. 1, Midd. Rot. 86.

¶ *Voylont venier.* For preparation is to be made upon warning before the Enemy ome indeed into England. This appeareth to be in the time of hoſtility and war, or for paration therefore. But a Tenure to keep a Caſtle in time of peace only is no Knights ice.

leta ſpeaketh of an old word called Wardwite, and (ſaith he) ſignificat quietantiam miſeri- diæ in caſu quo non invenerit quis hominem ad Wardam faciendam in caſtro. ‡ 2 Rol. 505. Fleta lib. 1. cap 24.

Sect. 112.

ET ſi un tenant que tient de ſon ſeignior per ſervice entier fee de Chier monſt, ſon heire ſi eſteant de plein s. de 21 ans,

AND if a Tenant which holdeth of his Lord by the ſervice of a whole Kinghts fee dieth, his heir then being of full age, s. of 21 years, then

¶ *Reliefe, Relevium.* This word is derived from the original before. ‡ Ante 67. a. Vide Sect. 101. ‡ 3 Co. 66. ‡ Ante 47. b.

Nota, Relief (a) is no ſervice, but an improvement of the ſervice, or an incident to the ſervice, for the which the Lord may diſtrein but cannot have an Action of Debt, but (a) Temps E. 1. relieſe 13 41 E. 3. 22. 4 E. 2. avowry 210. 7 H. 6. 13. 22 H. 8. Rot. 528. 24 E. 1. avowry 233.

but his Executors or Administrators may have an Action of Debt, and cannot distrain.

‡ Ante 47.

(b) Stat. de 1 E 2. de militibus. Vide lib. 9. fol. 124. Aerh. Lowes case.

And it (b) is to be understood that feodum militis, a Knights Fee, consisteth of twenty pound land, and he payeth for his relief for a whole Knights fee, the fourth part of his fee, viz. five pound, and so according to the rate.

: 2 Inst. 596. b

: Ante 69 b.

Baronia, a Barony, or a Barons Fee consisteth of thirteen Knights fees, and the third part of a Knights fee, which amounts to four hundred Marks per annum, and the Baron for an entire Barony payeth for his relief an hundred Marks, which is the fourth part of the value of his Barony.

donque le Seignior avera C s. pur reliefe, & del heire celuy que tient per le moitie dun fee de Chivaler L s. & de celuy que tient per le quart part de fee dun Chivaler 25 s. & sic q̄ pluis, & que meins, meins.

the Lord shall have C s. for a relief, and of the heir of him which holds by the moity of a Knights fee 50 s. and of him which holds by the fourth part of a Knights fee 25 s. and so he which holds more, more, and which less, less.

‡ 2 Rol. 516.

Comitatus, an Earldom, or an Earls fee consisteth of a Barony, and the third part of a Barony, which includeth twenty Knights fees amounting to four hundred pound land per annum, and he payeth for his relief for an entire Earldom the fourth part of his revenue, and that is an hundred pound. All which appeareth by the statute of Magna Charta, cap. 2. made in the ninth of Henry the third, at which time there was neither Duke, Marquess nor Viscount in England, as before is said. But there be presidents in the Exchequer, that a Dukedom consisting of two Earldoms, viz. eight hundred pound land by the year, payeth two hundred pound, and a Marquess consisting of two Baronies, viz. eight hundred Marks land per annum, and of an Earldom and a half payeth two hundred Marks for his relief. What the Viscount shall pay in certain I have not heard. Before the making of the statute of Magna Charta the King had rationabile relevium of Noblemen, and it was not reduced to any certainty, yet ought it to have been reasonable and not excessive.

Glanvil lib. 9. cap. 4 9. Bracton lib. 2. fol. 83. Britton fol. 178. Ockam 42. F.N.B. 83. 256. Fleta lib 17. Magna Charta cap. 2. Vide Britton fol. 84. 14 H. 4 in : cordo lond. 10 H. 7. 19 28 E 3 Ass. 122 tit. avowry 126. 18 E. 3. 8.

I have seen the Record of a Charter made in 20 H. 6. to Henry Beauchampe, Earl of Warwick, whereby he was created King of the Isle of Wight, to him and the heirs males of his body, his relief was incertain, and not limited by the statute of Magna Charta.

It is to be observed that the words of the statute of Magna Charta be Hæres Comitis de Comitatu integro, & hæres Baroniæ de Baronia integra, &c. Now what an entire Earldom and an entire Barony is hath been declared before.

It is also to be observed that at and before the statute of Magna Charta, all Earldoms and Baronies were derived from the Crown, and were holden of the King in Capite, and the King would not suffer them to be divided or severed. And such entire Earldoms and entire Baronies are within the statute, but at this day Earls and Barons are without such Earldoms and Baronies of the Kings gift in chief. For at the creation of an Earl, he hath sometime an annuity granted unto him, and sometime nothing, so as such Earls and Barons so created, are clearly out of the statute of Magna Charta, and are to pay such reliefs as other men that hold of the King in Capite. For as the heir of a Knight shall not pay relief unless he hath a Knights fee, &c. so neither the Earl nor Baron shall pay any relief by this statute, unless he hath an Earldom, &c. or Barony, &c.

16 E. 3. Eschange 2. 46 E. 3. forfeiture 18.

¶ *Son heire de pleine age, s. de 21 ans.* And yet in some case the heir shall pay relief when he was within age at the time of the death of his ancestor. As if a man holdeth lands of the King by Knights service in Capite, and of a common person other lands by Knights service, and dieth his heir being within age, the King hath all in Ward by his Prerogative until the full age of the heir. In this case the heir shall pay relief to the other Lord, for that the King had the wardship of body and lands. And the Lord upon every Discent ought to have either wardship or relief.

24 E. 3. 24. 26 H. 8. 32 H. 8. cap. 2. in fine.

But if there by Lord and Tenant by Knights service, and the Tenant dieth, his heir being within age, the Lord waiveth his wardship as he may, and taketh himself to his Seigniory, in this case the Lord shall not have relief at his full age, because he might have had the wardship of the body and land. Lord and Tenant of two Mannors by divers tenures by Knights service, the Tenant is disseised of the one, and the Disseisor dieth seised, and the Tenant dieth seised of the other, his heir within age, the Lord seised the body and lands of the Mannor, and after the heir at his full age recovereth the other Mannor against the heir of the Disseisor, he shall pay relief for that Mannor, and so one Lord of the heir of one Tenant shall have both wardship during his minority, and relief at his full age.

1 E. 3 6. Pl. Com 229. 33 E. 3. tit. gar. Statham. : : Co. 68. a.

¶ So

I *Son heire.* (k) And yet the ſucceſſor of a Biſhop or Abbot may pay relief by preſcription or grant.

If the Tenant infeoffeth his heir apparent by colluſion, and dieth, (l) his heir of full age, it is a queſtion in our books, whether he ſhall have relief either by the Common Law, or by the ſtatute of Marlebridge, ca. 6. But now the ſtatute (m) of 13 El. ca. 5. hath cleared that queſtion, and ordained that the Lord ſhall have relief where the conveyance is made to any perſon by colluſion

(k) 3 E.3.13.76. 8 R.2.relief 14,3 H.4.2. 2 E.3.avowry 124.
(l) 39 E.3.tit. Relief. 24 E.3.Relief.11. Bracton lib.2.85.
(m) 13 Eliz.cap.5.

Sect. 113.

This evident, and needeth no explanation.

Tem home poit teñ ſon fre de ſon Sñr per le ſervice de fees de Chivaler, & donque e eſteant de pleine age al tẽps noſt ſon aunceſtre paiera a ſon x l. pur reliefe.

ALſo a man may hold his land of his Lord by the ſervice of two Knights fees, and then the heir being of full age at the time of the death of his anceſtor ſhall pay to his Lord x pound for relief.

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NOta ſi ſoit aiel, pier, & ſa mere moruſt nt le pier de le & puis laiel que t ſa terre per ſer- de Chivaler mo- ſeiſie, & ſa terre endiſt al fits la e, come heire al que eſt deins age: ceſt cas le Sñr a le garde de la e, mes nemy le pe del corps del e, pur ceo que nul a en garde de ſon s a aſcun Sñr nt ſon pier, pur que le pier durant pie avera le mar- ge de ſon heire arant, & nemy le t. Autrement eſt le pier eſt mort nt la mere, lou le e tenus en Chi-

NOte, if Grandfather, father and ſon, and the mother dieth living the father of the ſon, and after the grandfather which holds his land by Knights Service dieth ſeiſed, and his land deſcend to the Son of the mother as heir to the grandfather, who is within age: In this caſe, the Lord ſhall have the wardſhip of the land, but not of the body of the heir, becauſe none ſhall be in ward of his body to any Lord, living his father, for the father during his life ſhall have the marriage of his heir apparent, and not the Lord. Otherwiſe it is where the father dieth living the mother,

Fitz. Yet the father ſhall have the marriage of his Daughter if ſhe be his heir apparent, and Littletons reaſon extendeth to the Daughter, for that (ſaith he) the father ſhall have the Wardſhip of his heir apparent, within which words the Daughter is included, ſo long as ſhe continueth heir apparent.

Fleta lib.1.cap.5. 16 E.3.diſſeiſin 68 31 E.1.gard.154. 8 E.2.treſp.235. F.N.B. 243. Ambroſia Gorges caſe lib.6.fol.22. 9 Co.131.

¶ *Le Seignior averra le gard del terre.* Note, that albeit in this caſe the law doth give the cuſtody of the body to the father, and barreth the lord thereof, yet the lord ſhall have the wardſhip of the land by force of the tenure at the firſt creation thereof. And ſo it is if the father marrieth his heir within age and dieth, yet the lord ſhall have the wardſhip of the land.

¶ *Vivant ſon pier.* This doth not extend to any collateral heir, but only to the Son or Daughter being heir apparent; for albeit a man ſhall have an action of treſpaſs, Quare conſanguineum & hæredem cepit, and albeit the words be Cujus maritagium ad ipſum pertinet, becauſe the well beſtowing of his

9 E.2.18 E.3.25.29 Aſſ. 35. 29 E.3. 37. 31 E.3. barr. 217.

32 E.2.Gard.32. 30 E.3.17. 31 H.6.55. 12 H.4.16. F.N.B 143. 31 E.3. Br.357. 9 E.4.53. ‡ 2 Co. 91.

his heir apparent in mariage is a great eſtabliſhment of his houſe, yet that is to be underſtood as againſt a wrong doer, but not againſt a gardian in Chivalry, and the mother ſhall have the like writ for taking away of her ſon and heir apparent: and yet the mother ſhall not bar the Lord by Knights ſervice, of his wardſhip of the body, as Littleton here ſaith. Qui tamen ex filia naſcitur in poteſtate tua non eſt, ſed patris ejus.

valrie diſcendiſt al fits de part ſon pier, &c.

where the land holden in Chivalry deſcendeth to the ſon on the part of the father, &c.

Vide Flet.lib.1.cap.6. See W.2.c.35. ‡ 2 Rol.39. ‡ 3 Co. 37. & 39.a.

¶ *A aſcun Seignior.* But the caſe there is Lord, & Feme Tenant by Knights ſervice of a Carve of land, the Feme maketh a feoffment in fee upon condition, and taketh the Lord to husband, and hath iſſue a ſon, the wife dieth, the iſſue entreth for the condition broken, the lord entreth into the land as Gardian by Knights ſervice, and maketh his executors, & dieth: in this caſe the Executors ſhall have the wardſhip of the land during the minority of the heir, but not the wardſhip of the body; for albeit the lord ſeemeth to have a double intereſt in the wardſhip of the body, one as lord, and another as father, yet as father, and not as Lord by judgment of law, he ſhall have the wardſhip of the body of his ſon and heir apparent in reſpect of nature, which was before any wardſhip in reſpect of Seigniories by Knights ſervice began, and that wardſhip by reaſon of nature cannot be waived, and claim made in reſpect of Seigniory. And the Executors of the father ſhall not have ſuch a wardſhip which the ſtator had as father, neither can ſuch a wardſhip be forfeited by outlawry, becauſe it is due to the father in reſpect of the privity of nature.

‡ Poſt 88.b 33 H.6.55.lib. 7.fol.13. in Calvins caſe. Vide Flet.lib.1.c.12. ſect.cum Patr.de feodo, ‡ Ante 8.a. ‡ 2 Sid.148. ‡ 6 Co.22. ‡ 2 Rol 39.

¶ *De ſon heire apparent.* And therefore if the father be attainted of Felony, &c. than cannot the ſon or daughter be an heir apparent, becauſe the blood is corrupted betwixt them, and conſequently in the life of the father, his ſon in that caſe ſhall be in ward.

A woman ſeiſed of lands in fee holden by Knights ſervice, taketh husband and dieth, and hath iſſue, and the wife dieth, the iſſue ſhall be in ward, and the father ſhall not have the cuſtody of him, for that in the eye of the law he is not his heir apparent, as Littleton here ſpeaketh.

Sect. 115.

This Section is an addition to Littleton, and therefore I paſs it over; and the rather that the ſaid Statute of 3 H. 7. is become of no force, for that by the ſtatute of 27 H. 8. cap. 10. all uſes are transferred into poſſeſſion.

‡ Vide 27. H.8. cap. 10. of Uſes.

¶ NOta, ſi home ſoit ſeiſie de Terre que eſt tenus per ſervice de Chivaler, & fait feoffment en fee a ſon uſe, & morust ſeiſie del uſe, ſon heire deins age & nul volunt per luy declare, le Seignior avera Briefe de droit de gard de corps, & del Terre, ſicome Tenant uſt devie ſeiſie del demeſne. Et ſi le heire ſoit de pleine age al temps del mozant ſon anceſtor, en tiel caſe il payera reliefe, ſicome il fuiſſoit ſeiſie del demeſne. Et ceſt per leſtat de Anno 4 H. 7. cap. 17.

NOte, that if a man be ſeiſed of land which is holden by Knights ſervice, and maketh a feoffment in fee to his own uſe, and dieth ſeiſed of the uſe, his heir within age, and no will declared by him, the Lord ſhall have a writ of Right of the wardſhip of the body and land as if the tenant had died ſeiſed of the demeſne. And if the heir be of full age at the time of the decease of his Anceſtor, in this caſe he ſhall pay relief as if he had been ſeiſed of the demeſne. And this is by the ſtatute of *4 H. 7. cap. 17.*

Sect.

Sect. 116.

NOta, il y ad Gardein en droit en Chivalrie, & Gardein en fayt en Chivalrie. Gardein droit en Chivalrie icy le Seignieur per cause de son Seigniorie, est seisie de gard de Terres & del heyre. supra. Gardein en fait en Chivalrie est, quant en tiel case le Seignieur apres son dessin graunt per fayt saunz fayt le Gard de Terres ou del heire ou dambideux a auter, Per force quel graunt le grauntee est en possession, donque est le grauntee appel Gardein en Fait.

NOte, there is Gardian in right in Chivalrie, and Gardian in Deed in Chivalrie. Gardian in Right in Chivalrie is, where the Lord by reason of his Seigniory is seised of the Wardship of the Lands, and of the Heir, *ut supra*. Gardian in Deed in Chivalrie is, where in such case the Lord after his Seisin grants by deed or without deed, the wardship of the Lands, or of the Heir, or of both, to another, by force of which grant the Grauntee is in possession, then is the Grauntee called Gardian in Fait, or Gardian in Deed.

¶ Here Littleton diuideth Gardian in Chivalry, into Gardian in Right, and Gardian in Fait. And this is evident, and needeth no explanation. ‡ F.N.B. 138.b.

¶ *Per fait ou saunz fait.* Here Littleton affirmeth, That the Wardship of the body may be granted over without Deed, and herein noteth a diversity between an original chattel of a thing that properly lyeth in grant, and a chattel derived out of a Freehold of any thing that lyeth in grant. As for example, if a man make a lease for years of a Villein, this cannot be done without deed, neither can the Lessee assign it over without deed, because it is derived out of a Freehold that lyeth in grant: but the wardship of the body is an original chattel, during the minority derived out of no Freehold, and therefore as the law createth it without deed so it may be assigned over without Deed.

‡ 2 Rol.62. 12 E 3.tit.Grant 59. 7 E.3.63.26 E 3.65. 28 E.3.96. 14 E.3.Act. sur Lest.17.25 E.3.40. 31 E 3.Vouch. 46 E.3.25. 20 E.4.16. 12 H.4.19. 5 H.7.1.7.36. 22 El.Dyer 361. 35 H.8.Br.tit.grant 83

A Corporation aggregate of many cannot make a lease for years without Deed, in respect of the quality of the Incorporation, but their Lessee may assign it over without Deed. ‡ Sid.162. ‡ 11 Co.77.a. ‡ Post.250.a.264.a.325a. ‡ 2 Co.11. ‡ 6 Co.150.a. 26 H.8.tit.grant B 125. 22 H.6.34. 19 H.6.33. 24 E.3.69.70. 5 E.3.58. 43 E.3.15.5 H.7.36. 14 H.7.16. 15 H.8.8. Bract.366.368.246. 43 E.3.16.5 H.7.37. 11 H.6 4.6 H.7.3 18 H.8.16 El.Dyer 323.

If an Advowson be holden by Knights service, and the Tenant dieth, his heir being within age, the Lord cannot grant the wardship of the Advowson without Deed, because it is derived out of an Inheritance that lyeth in grant, and passeth not by Livery; for Jus præsentandi est incorporale, and so (albeit there be diversity of opinions in our Books) is the Law taken at this day.

Chap. 5. Sect. 157.

Socage.

Mirror ca.1.Sect.2.
4 H.7.cap.19.
Lib 4.Tirringhams case. fol.39 & 4 H.7. ca.12.
‡ 6 Co. 6.

¶ T *Enure in Socage.* Agriculture or Tillage is of great account in Law, as being very profitable for the Commonwealth, where the goodness of the habit is best known by the privation: for by laying of lands, used in tilth, to pasture; six main inconveniencies do daily increase. First Idleness, which is the ground and beginning of all mischiefs. 2. Depopulation and decay of Towns; for where in some Towns, 200. persons were occupied, and lived by their lawful labours, by converting of tillage into pasture, there have been maintained but two or three herdmen: And where men have been accounted sheep of Goods pasture, now become sheepmen of these pastures. 3. Husbandry, which is one of the greatest commodities of the Realm, is decayed 4. Churches are destroyed, and the service of God neglected by diminution of Church livings, (as by decay of tythes, &c.) 5. Injury and wrong is done to Patrons and Gods Ministers. And 6. The defence of the Land against forein enemies is enfeebled and impaired, the bodies of husbandmen being more strong and able, and patient of cold, heat, and hunger, than of any other.

¶ T Enure en socage est, lou le tenant tient de son seignior son tenemẽt p certaine service pur touts mãers de services, issint que les services ne sont pas services de chivaler: Sicome lou home tient son terre de son seignior per fealtie & per certeine rent pur touts maners de services, ou lou home tient p homage & fealtie & certeine rent pur touts maners de services, ou lou il tient p homage & fealty p̃ touts maners de services, car hõage per soy ne fait pas service de chr.

T Enure in Socage is, where the Tenant holdeth of his Lord the tenancy by certain service for all manner of services, so that the service be not Knights service; as wherea man holdeth his land of his Lord by Fealty and certain rent for all manner of services; or else where a man holdeth his land by homage, Fealty, and and certain Rent, for all manner of services for hamage by it self maketh not Knights Service.

‡ F.N.B. 2.
(a) 20 E.3. Admeasurement 8. 4 Ass.21. 24 E 3.25.
* Mirror. Bract.fo.217. Fleta lib. 2.ca.41. Regist. orig.67. Ockam 28.39.4 E.3.1.a. 18 E 2.tit. action sur le stat.45. Temp. E 1. Avowry 230. 29 E.3.16.17. Cic.lib.1.offic. Virgil.lib.1.Georg. Seneca in Epist.

The two consequents that follow of these inconveniencies, are first the displeasure of Almighty God, and secondly the subversion of the Policy and good Government of the Realm, and all this appeareth in our Books. And the Common Law (a) giveth arable land (which anciently is called Hyde & gaine) the preheminency and precedency before meadows, pasture, woods, mines, and all other grounds whatsoever: and * averia carucæ the beasts of the plough have in some cases more privilege than other cattle have. And amongst the Romans Agriculture or tillage was of high estimation, insomuch as the Senators themselves would put their hand to the plough, and it is said, that never prospered tillage better, than when the Senators themselves plowed (such force hath the example of superiors) whereof three famous Romans in their several kinds spake.

Omnium rerum ex quibus aliquid exquiritur nihil agricultura melius, nihil uberius, nihil dulcius, nihil libero homine dignius.

O Fortunatos nimium, sua si bona norunt
Agricolas, quibus ipsa procul discordibus armis
Fundit homo facilem victum justissime tellus.

Nullum laborem recusant manus quæ ab aratro arma transferuntur, &c. fortior autem miles e fragoso venit, sed ille unctus, & nitidus in primo pulvere deficit. But now let us peruse the Authors words.

¶ *Socagium.* Littleton in this Chapter Sect. 119. fetcheth this word from the Original. gium idem est quod servitium socæ, & soca idem est quod caruca, s. un soke ou un carue. nd Bracton agreeth herewith. Dicitur socagium (saith he) a socco & inde tenentes dicuntur manni (b) eo quod deputati sunt tantummodo ad culturam. And Benerth signifieth the service : Plough and Cart. It is to be observed that in the book of (c) Domesday, Land holden nights service was called Tainland, and land holden by Socage, was called Reveland, which areth in that it is said there, Hæc terra fuit terra regis Edwardi Taineland sed post conversa Reveland. And in that book they that held in Socage were called by several names, as emanni or Sokemanni, which still continueth: sometime* Coleberti, i.e. qui tenent in liberum gium per redditum, and sometime they are called Radchenestres, i.e. liberi homines qui tamen nt, herciebant, falcabant, metebant, &c. And here it appeareth how necessary it is, that words ched from their originals, and our Author Est verus Etymologus both in this and in many r places in his (d) three books. And it is to be observed once for all, that the legal termation of (agium) in composition signifieth service or duty, as homagium the service of the , Escuag', servitium scuti (e) Socagium servitium socæ, hidagium the duy to be paid for a hide ough-land, and so of cornagium, coragium, carnagium, cariagium', burgagium, vellenagium, and agium, (which one describeth thus) quod datur alicui ut tuto conducatur per loca alterius, the like.

(b) Bract. lib. 3. fol. 77.
(b) Glanvil lib. 7. cap. 9. & 11. & lib. 9. ca. 4. Fleta lib. 1. ca. 8. & lib. 3. ca. 14. & 16. Brit. fol. 164.
(c) Domesday. Herefordsc. Vid. devant Sect 1. Sudru. Wendeford. Westcester sc.
* Mich. 10 E. 3. Coram rege Wilts in Thesaur.
(d) For Etymologies vid Sect. 95. 154. 164. 204. 234. 267. 268, &c.
(e) Fleta lib. 3. ca. 14. Bract. l. 2 cap. 16. Britton fol. 164.

¶ *Issint que le services* (f) *ne sont pas services de Chivaler.* And in the Section he saith and every tenure, that is not a tenure in Chivalry, is a tenure in age, Ex donationibus autem feoda militaria, vel magnam Serjantiam non continentibus, obis quoddam nomen generale, quod est socagium. Here Littleton speaketh of Tenures of mon persons, for grand Serjanty is not Knights service, and yet it is not a Tenure in age, as shall be said hereafter. Also he meaneth here temporal Services, and not Frankoign, as by the examples he put is manifest, and as in his proper place shall appear more rge. Also here Littleton speaketh of Socage largely taken, and so called ab effectu, that ll Tenures that have the like effects and incidents belonging to them, as Socage hath, ermed tenures in Socage, albeit originally service of the plough was not reserved: as if nally a Rose, a Pair of gilt Spurs, a Rent, and such like were reserved, or that the ants in Condemnatos ultrices manus mittant ut alios suspendio, alios membrorum detruncae, &c. puniant, these are said to be tenures in Socage ab effectu, for that there shall be like dein in Socage, like relief, and such other effects and incidents as a tenure in Socage , and are so termed to distinguish the same from Knights Service. May the worst tenure I have read of, of this kind, is to hold lands to be Ultor sceleratorum condemnatorum, ut suspendio, alios membrorum detruncatione vel aliis modis juxta quantitatem perpetrati sceleris iat, (that is) to be a Hangman or Executioner. It seemeth in ancient times such officers e not Voluntaries, nor for lucre to be hired, unless they were bound thereunto by Tenure. o note that some Tenures in Socage are named a causa, and some and the greater part effectu.

(f) Mirror ca. 3. sect. 18. Fleta ubi supra. ‡ F.N.B. 82. c.
Ockam ca. quæ per solam consuetudinem, &c. Ockam fo. 31. a. & b.

¶ *Car homage de soy ne fait service de Chivaler.* But it is a presumption where age is due, that the land is holden by Knights Service, as hath been said.

Sect. 118.

ITem hõe poit teñ de son sñr per fealty ẽm, & tiel tenure tenure en socage. Car chescũ ure que nest pas tenure in chiry, est tenure en socage.

ALso a man may hold of his Lord by Fealty only, and such tenure is tenure in socage: for every tenure which is not tenure in chivalry is a tenure in socage.

‡ 4 Co. 8.

Of this sufficiently hath been said before

Sect. 119.

ET il est dit que la cause pur q̃ tiel ure est dit & ad le noe de tẽure ẽ socage,

AND it is said that the reason why such tenure is called, and hath the name of tenure in Socage,

¶ *Temps de memory.* Time of memory is when no man alive has had any proof

‡ 9 Co. 57.

proof to the contrary, nor hath any Conuſance to the contrary, as ſhall be hereafter ſaid in his proper place. And of neceſſity this change hereafter ſpoken of muſt be before time of memory, for within time of memory the ſervices of the Plough cannot be changed into mony by conſent of the Tenant, and the deſire of the Lords, s. into an annual Rent, neither by Releaſe or Confirmation or other Conveyance ſo long as the ſeignory Remaineth, as ſhall be ſaid in his due place.

¶ *Devoyent vener ove lour Sokes.* THE Plough is named propter excellenti' but the Sicle, and the Syth, for the reaping in harveſt and ſuch like are alſo included. For as Carucata terræ, a Plough land, may contain Houſes, Mills, Paſture, Meadow, Wood, &c. as pertaining to the Plough, ſo under the ſervice of the Plough all ſervices of Tillage or Husbandry are included.

¶ *Uncore le noſme de Socage demurt.* Although the cauſe whereupon the name of Socage firſt grew be taken away, yet the name remains the ſame it hath been, and is uſed to diſtinguiſh this tenure from a tenure by Knights ſervice.

± 6 Co. 59. Cap. burgage Sect. 170.

‡ 5 Co. 72: Mirror cap. 2. Sect. 18. Vid. 19 E. 2. avowry 224 3 E. 2. accon. fur left. 24. 10 E. 3. 24. 20 E. 3. avowry 124. 39 E. 3. 17. 39 Aſſ. p. 3. 20 Aſſ. 1. ‡4 Co. 36.

Cap. confirmation. Sect. 539.

§ E. 3. 161. 5 E. 3. 283.

eſt ceo ; Quia ſocagium idem eſt quod ſervitium ſocæ, & ſoca idem eſt quod caruca, s. **un ſoke ou un carue. Et en ancient temps devant le limitation de temñ de memorie grand part de les Tenants que tyendz- ont de lour Seignioꝛs per Socage, devoient ve- ner ove lour ſokes, cheſ- cun de les dits tenants per certein jours per an pur arer & ſemer les de- meſnes le Seignioꝛ, & pur ceo que tielx overages, fueront fait pur le viver & ſuſtenance de lour Seig- nioꝛs, ils ſueront quits en- vers lour Seignioꝛs, de touts maners de ſervices, &c. Et pur ceo que tielx ſervices fueront faits ove lour ſokes tiel tenure fuit appel tenure en ſocage. Et puis apꝛes tiels ſervices fueront changes en de- nyers, per conſent des Tenants & per deſire des Seignioꝛs, s. en un an- nual rent, &c. Mes un- coꝛe le noſme de Socage demurt, & en divers lyeux les Tenants uncoꝛe font tiels ſervices ove lour ſokes a lour Seignioꝛs, iſſint que touts maners de tenures que ne ſont pas tenures per ſervice de Chi- valer, ſont appels tenures ẽ Socage.**

is this; becauſe *Socagium idem eſt, quod ſervitium Socæ*, and *Soca, idem eſt quod caruca, &c.* A Soke or Plough. In ancient time before the limitation of time of memory, a great part of the tenants which held of their lords by Socage, ought to come with their Plough every of the ſaid Tenants for certain days in the year to Plow and for the Demeſn of the Lord. And for that ſuch Work were done for the livelihood and ſuſtenance of their Lord, they were quit againſt their Lord of all manner of ſervice &c. And becauſe the ſuch ſervices were done with their Ploughs, the Tenure was called Tenure in Socage. And afterward theſe Services were changed into money by the conſent of the Tenants, and by the deſire of the Lords, *viz.* into an annual rent, &c. But yet the name of Socage remaineth, and in divers places the Tenants yet do ſuch ſervices with their Ploughs to the Lord, ſo that all manner of Tenures which are no Tenures by Knights Service, are called Tenures in Socage.

Nomina ſi neſcis perit co- nit-

o rerum. Et nomina si perdas certè distinctio rerum perditur. **Therefore the names of things Littleton here teacheth) are for avoiding of confusion diligently to be observed.**

Sect. 120.

ITem si home tient d̄ son Seignior per escuage certaine, s. ē tiel form̄ unt lescuage curge, & assesse per Parliament reinder summ ou meinsumme, que le tenant paiera a son Seignior forsque demy marke escuage, & nient pluis meins, a quel graund mme, ou a quel petite mme que l'escuage curge tiel tenure est tenure en cage, & nemy service chivalrie. Mes iou le me que le tenant paie pur lescuage est non ain, s. iou il poit e- q̄ l' summe q̄ le tenant ra pur lescuage a son gnior poit estre a un s le greinder & a autoits le meinder, sque ceo que est assesse, donques tiel tenure est ure per service de Chier.

ALso if a man holdeth of his Lord by escuage certaine s. in this manner, when the escuage runneth, and is assessed by Parliament to a greater or lesser Sum, that the Tenant shall pay to his Lord but half a Mark for Escuage, and no more nor less, to how great a Sum, or to how little the Escuage runneth, &c. Such tenure is tenure in Socage, and not Knights Service; but where the Sum which the tenant shall pay for Escuage is uncertain, s. where it may be that the sum that the tenant shall pay for Escuage to his Lord may be at one time more, and at another time less according as it is assessed, &c. such tenure is tenure by Knights Service.

¶ *Escuage certein*, Is not in rei veritate servitium Scuti, which is to be done by the body of a man, but it is servitium Crumenæ, of mony, which is to be drawn out of the purse, and that is in effect a Tenure in Socage, wherein it is to be observed that the service of payment of mony is the more base, and less profitable for the Commonwealth in this case, and hereof somewhat hath been said before in the chapter of Escuage, Sect. 98, 99.

** 6 Co. 6.*

If a man hold by Homage, Fealty, and Escuage, s. by an half penny, when escuage runs at forty shillings, this is a tenure in socage, and no Knights Service, for two causes.

15 E.2. tit. avowrie 216. 31 E.1. Ass. 441. 26 Ass. 66. 5 E.2. 16.

First, It is Socage tenure, because of the certainty, for to the tenure in socage certa servitia do ever belong, so as the husbandman may the rather live in quiet.

5 E.4. 128. Vid. Rot. Par. 4 E.3. nu. 19. Claverings case excellently resolved in Parliament. Hil. 3 E.2. coram Rege Rot. 34. Agnes Frowids case.

Secondly, Escuage is to be paid at every time when it is assessed, and here it is not to by but when it amounteth to forty shillings.

Sect. 121.

ITem si home tient sa tēt pur paier certe rent a son Seignior Castle-garde, tiel te- est tenure ē socage:

ALso if a man holdeth his land to pay a certain rent to his Lord for Castle-guard, this tenure is tenure in Socage; but

¶ Herein the difference standeth thus. If a rent be paid for Castle-guard, it is clear a socage tenure, as it is

vid. sect. 88. 89.

Vide Lib. 4. fol. 88 in Lutterels case. 19 R. 2. gard. 195. 26 Ass. 66. F.N.B. 83. 256 Lib 6. fol. 20. Gregories case.

is agreed in Lutterels case according to Littletons opinion, but if a sum in gross or other thing be voluntarily paid or given by the tenant, and

Mes lou l' tenant doit per luy mẽ, ou per un auter faire Castle-garde, tiel tenure est tenure per service de Chivaler.

where the tenant ought by himself or by another to do Castle-gard, such tenure is tenure by Knights Service.

voluntarily received by the Lord in lieu of Castle-gard, yet the tenure by Knights service remaineth. Vide Sect. 88. 89.

Sect. 122.

‡ 5 Co. 118 ‡ 32 H. 8. 37. ‡ 4 Co. 49. ‡ 7 Co. 39.

¶ IT is called Rent Service, because it is accompanied with some corporal service, as Fealty at the least, in respect whereof the Lord may distrein for it of common right. See more of this matter in the Chapter of Rents.

¶ Item en touts cases lou l'tenant tient del Seignior a paier a luy ascun certeine rent, cel rent est appelle rent service.

ALso in all cases where the tenant holdeth of his Lord to pay unto him any certain Rent, this Rent is called Rent Service.

Sect. 123.

‡ 2 Rol. 40. ‡ F N.B. 140.

¶ EN *tiels tenures en Socage.* If a man be seised of a Rent charge, Rent seck, common of pasture, & such like inheritances, which do not lie in tenure, & dyeth his heir within age of 14 years. In this case the heir may chuse his Gardian, but if he be of such tender years as he can make no choice then (if the father hath made no disposition of the custody of the child) it were most fit, that the next of kin to whom the inheritance cannot discend should have the custody of him. And whosoever taketh the rent, &c. the heir shal charge him in an account. But if he hold any Land in Socage, In that Case the

¶ Item en tielx tenures en socage si l' teñ ad issue & devie, son issue esteãt deins lage d 14. ãs donques l'prochein amy del heire a que l' heritage ne poit discẽdr avec la gard d la terr & del heir jesq al age del heir de 14. ans, & tiel Gard est appelle gardein en socage. Car si la terre descẽdist al heire de part le pier, donques la mere, ou auter procheine cosen de pt le mere avera la garde. Et si le terre discendist al heir de part la mere, donques le pier ou le prochein amy de part del pier avera le garde de tielx terrs ou tenements. Et quant l' heire vient al age de 14. ans compleat, il poit enter & ouster le Gardein en Socage, &

ALso in such Tenures in Socage if the Tenant have issue and die, his issue being within the age of 14 years, then the next Friend of that Heir to whom the inheritance cannot descend shall have the Wardship of the Land and of the Heir until the age of 14 years, and such Gardein is called Gardein in Socage. For if the land descend to the heir of the part of the Father, then the Mother, or other next Cousin of the part of the Mother shal have the Wardship. And if land descend to the heir of the part of the Mother then the Father or next Friend of the part of the Father shall have the wardship of such Lands or Tenements.

+ 2 Rol. 40. Vid. le statute de 4, & 5 Ph. & Marie cap. 8.

pter la terre luy
n fil voit. Et tiel
deine en ſocage
prenda aſcuns
s ou profits de
terres ou tene-
ts a ſon uſe de-
ne, mes tant-
nent al uſe & pro-
el heire, & del ceo
ndra accompt al
quant pleaſt al
apres ceo que
heire accompliſh
de xiii. ans.
tiel Gardein
ſon accompt ave-
llowãce de touts
reaſonable coſts
pences en touts
es, &c. Et ſi tiel
ein maria l'heire
s xiiii. ans, il
mptera al heire.
ſes executors de
e del mariage,
ent que il ne priſt
s pur le value del
age, pur ceo que
ra tette ſa folly
eſne, que il luy
it marier ſans
ber la value del
age, ſinon que il
maria a tiel ma-
e que eſt tant en
e come le mari-
el heire, &c.

And when the heir cometh to the age of 14 years compleat, he may enter and ouſt the Gardein in ſocage, and occupy the land himſele if he will. And ſuch Gardian in ſocage ſhall not take any iſſues or profits of ſuch lands or tenements to his own uſe, but only to the uſe and profit of the heir, and of this he ſhall render an account to the heir when it pleaſeth the heir after he accompliſheth the age of 14 years. But ſuch gardian upon his account ſhall have allowance of all his reaſonable coſts and expences in all things, &c. And if ſuch gardian marry the heir within age of 14 years he ſhall account to the heir or his executors of the value of the mariage, although that he took nothing for the value of the mariage, forit ſhall be accounted his own foly, that he would marry him without taking the value of the mariage, unleſs that he marieth him to ſuch a mariage that is as much worth in value as the mariage of the heir.

Gardian in ſocage ſhall take into his cuſtody, as well the rent charges, &c. as the land holden in ſocage, becauſe he hath the cuſtody of the heir.

¶ *Si le tenant ad iſſue & devie.* The ſame law it is if the tenant hath no iſſue; but a brother or couſin within age of 14 years at the time of his death. (a) Alſo this doth extend as well to iſſue female as to iſſue male. (a) 10 R.2. Account, 132

¶ *Deins lage de 14 ans.* Of this ſufficient hath been ſpoken in the next precedent chapter.

¶ *Donques le procheine Amy del heire a que le inheritance ne poit diſcender.* The next friend of the heir, &c. Here Amy or friend is taken for the next of blood, ſo the effect of it is, that the next of his blood to whom the inheritance cannot deſcend, whereby affinity without blood is excluded. Glanvil lib.7.cap.1?, Britton 163. Fleta lib.1.cap 9. Stat.de Hibernia, tit. Partion. ‡ 3 Co. 37.

¶ *Le procheine.* The next.

(b) If there be three brethren, and the youngeſt holdeth land in ſocage, and hath iſſue and dieth his iſſue within age of 14 years both the Uncles are in equal degree, and yet the eldeſt ſhall be Gardian, becauſe in equal degree the law preferreth him. (c) And yet if lands holden in ſocage be given to a man & to the heirs of his body, & he dieth his heirs within age, the next couſin of the part of the father albeit he be worthier ſhall not be preferred before the next couſin of the part of the mother, but ſuch of them as firſt ſeiſeth the heir ſhall have his cuſtody: But if lands be given in Frankmarriage, and the ‡ Plow.446.b. ‡ Poſt.118.b. (b) Vid.30.Aſſ.47 (c) Pl.Com.Carrel's caſe. ‡ 2 Rol.40. ‡ Ante 22.a] 47 H.3.Gard.14. ‡ 3 Co.37.

gs have Iſſue and die their Iſſue within age of 14 years, the next of kin of the part Mother, ſhall have the cuſtody of the body, and not the next of kin of the part of the r albeit he firſt ſeiſed it, becauſe the Mother was the cauſe of the Gift. If a man be of Lands holden in Socage of the part of his Father, and of other Lands holden in ge of the part of his Mother, and dieth, his Iſſue being within the age of 14 years.

In

In this case such of the next kin of either side as first happeth the body of the heir shall h
him, but the next of blood of the part of the father shall enter into the lands of the part o
mother, and the next of kin of the part of the mother, shall enter into the lands of the par
the father.

2 F.N.B. 140.
(d) F.N.B. 139.b Regist.
(e) 7 E. 3. 46.
16 E. 3 ac. 52.
21 E. 3. 8. 31 E. 3. Enfa. 6.
17 E. 2. Accounnt 121.
26 E. 3. 63 10 H. 6 14.
F.N.B. 118.
(f) Bract. lib. 2. fol. 88.
(h) Fleta l. 1. c. 10.

(d) If A. be Gardian in Socage, of the body and lands of B. within the age of fourt
years, A. shall be Gardian in Socage per cause de gard. But an Infant within age, that is
not in the custody of another, cannot be Gardian in Socage, because no writ of account lyes
against an Infant. And herewith agreeth Bract. (f) and yieldeth this reason, Alium reg
non potest, qui seipsum regere non novit. And Fleta saith (h) That minor minorem custodire
debet, alios enim præsumitur male regere qui seipsum regere nescit. And by like reason an Id
a man non compos mentis, a Lunatick, a man cæcus & mutus, or surdus & mutus, or a Leper
moved by a writ de Leproso amovendo, cannot be gardian in socage, but in the case of G
per cause de Gard, there lyeth an Action of Account against A. in the case abovesaid.

(l) Lib. Rub. cap. cap. 70.
(k) Glanvil l. 7. c. 11.
(l) Pl. Com. Carrels case. ‡ 2 Rol. 40. ‡ 3 Cro. 825. ‡ Mo. 635.
(m) Lib. l. 1. f. 2. 3.

¶ *A que le heritage ne poet descender.* (i) Nullus hæredipetæ suo propinquo vel
traneo periculosa sane custodia committatur. Note (k) this word (Poet) may or can. (l) A
therefore this doth not only exclude an immediate descent, but all possibility of descent.
if a man hath issue two sons by several Venters, and having lands holden in Socage of
nature of Burg English, dyeth, the younger brother within age of fourteen years, (m) the el
brother of the half blood shall not have the custody of the land, because by possibility the
may inherit the land, for if the youngest dye without issue, and the land descend to an Uncle
elder brother of the half blood may be heir unto him: and herewith do agree our ancient A
thors: (n) Hæres sockmanni sub custodia capitalium Dominor' non erit, sed sub custodia co
guineorum suorum propinquorum, hoc est, eorum qui conjuncti sunt jure sanguinis, & non jure
cessionis, ex parte quorum non descendit hæreditas, & regulariter verum est quod nunquam rem
bit aliquis in custodia alicujus, de quo haberi possit suspitio, quod velit jus clamare in ipsa hæred
& unde si plures sint filiæ & hæredes tenere debeant in Socagio, nulla debet esse in custodia
rius. (o) And this is contrary to the Civil Law; for, Leges Civiles impuberum tutelas pro
de eorum sanguine committunt, sive agnati fuerint, sive cognati, unicuique, videlicet, secundum
dum & ordinem qui in hæreditate pupilli succesturus est. But this the Law of England saith,
quasi agnum lupo committere ad devorandum.

(n) Brac. li. 2. fo. 87. Brit. f 163. b. Fle l. c. 10. 28 E. 1. Strt. 1. Fortesc. c 40.
(o) Fortesc. ub. sup Statut. de Homagio capiendo, temps E. 1. ‡ 6 Co. 22.

¶ *Donques le mere.* Note, albeit Land cannot descend to the mother from her
(as hath been said) because inheritance cannot ascend, yet here it appeareth by Littleton, T
she is next of blood, for that none (as hath been said) can be Gardian in Socage, but the ne
of blood, and the like is to be said of the Father, as hereafter next appeareth.

¶ *Donques le Pier.* By this it appeareth, That the Father in case of a tenur
Socage shall be Gardian in Socage, and shall not have the custody of his eldest son in r
spect of his paternal natural custody, (as he shall have in case of a tenure by Knights serv
as before appeareth) but as Gardian in Socage: and the reason of the diversity is, for that
the case of a tenure in Socage, the Father must by Law be accountable to the Son both
his marriage, and also for the profits of his Lands, which he should not be if he had the cust
of his eldest son in this case as his Father, in respect of nature, and the act of Law no
doth any man wrong.

But no Lord or other person in respect of any tenure by Knights service or otherwise h
have the custody of any child that is heir apparent to his Father, but the Father only
ring his life, as hath been said before.

It is to be observed, that in the law of England, there are three manner of Gardianshi
viz. by the Common law, by statute law, and by custom. By the common law there are
manner of Gardians, viz. Gardian in chivalry (whom Littleton hath described before, Sect.
&c.) Gardian by nature, as the Father of the eldest son, of whom Littleton hath spoken S
114. Gardian in socage treated of the Littleton in this Section, and Gardian per cause de
ture, all frequent in (a) our books. By statute, viz. the statute in 4 & 5 Phil. & Mariæ of two
children, and that is in two manners, either of the Father or mother without assignation, o
any other to whom the Father shall appoint the custody, either by his last will, or by
Act in his life time, whereof you shall read at large (b) in Ratcliffs case in my Reports.

(c) Lastly, by custom, as of Orphans by the custom of the city of London, and of other c
and boroughs.

‡ 3 Co. 57.
(a) 8 E. 3. 43. 3 E. 45.
‡ 5 Co. 37.
(b) Lib. 3. fol. 57. Ratcliff, case.
(c) 32 E. 3. gard. 31. 8 R. 2 gard. 166. ‡ 2 Cro. 99.

¶ *Tant solement al use & profit del heir.* And therefore Gardian in Socage
not forfeit his interest by outlawry or attainder of Felony or Treason, because he hath not
to his own use, but to the use of the heir.

lso if the mother be Gardian in socage, and taketh husband, and dieth, the husband shall ave this custody by survivor, because the wife had it en aurer droit in the right of the heir. ardian in socage shall not(b) present to a benefice in the right of the heir, because he can- e accountable therefore, for that he can make no benefit thereof, for the law doth abhor uy or any corrupt contract for benefices, and therefore in that case the heir shall present self, and Britton speaking of these Gardians, said well, Les queux gardeins sont p'uis Ser- s que gardeins (that is) which Gardians are rather servants than Gardians.

¶ *Il rendra account, &c. apres que lheire ad accomplisshe lage de 14 ans.* s point hath been much controverted in our books, and the causes of the doubts have first upon the words of the statute of (c) Marlebridge cap. 17. 2. Upon the original writ of ount against the Gardian in socage. The words of the statute be Cum ad legitimam ætatem enerit tibi respondeat, &c. and legitima ætas, (f) lawful age, is 21 years. Also this writ of ount reciteth the said statute, Quare cum de communi *consilio regni nostri* provisum sit quod odes terrarum, & tenementorum quæ tenentur in Socagio hæredibus terrarum & tenementorum um cum ad plenam ætatem pervenerint reddant rationabilem compotum. (g) Whereupon it is ered that no action of Account did lie against the Gardian in socage at the Common law l the heir be of his lawful age of 21 years. But as to the first (legitima ætas) as the sta- (h) speaketh, or plena ætas (as the writ doth render it) are to be understood secundum subje- materiam, that is, of the heir of socage land, whose lawful and full age, as to the custody ardianship is 14. And as to the recital of the statute, (i) it is evident that an action of unt did lie against Gardian in socage at the Common law. And that the statute was e in affirmance or declaration of the Common law, for the statute speaketh only De custo- arentum, that is of a Gardian in right but yet an action of Account lieth against him that pleth the land as Gardian, albeit he be not of the blood (as hereafter shall be said.) And n consideration had of the said statute and of all the books, it was adjudged in the Court Common Pleas, Pasch. 16 Eliz. Rot. 436. according to the Opinion of Littleton, that the after the age of 14 years shall have an action of Account against the Gardian in socage, n he will at his pleasure, and so is an ancient question well resolved.

ritton was of opinion that the statute of Marlebridge which gave the Capias in Account, ex- deth to Gardian in socage for he wrote before the statute of W. 2. c. 11. But later books have ermed this point, that no Capias lieth against Gardian in socage, for the statute extendeth ayliffs only. Neither doth the statute of W. 2. extend to Gardian in socage, for that speak- only De servientibus, balivis, camerariis, & receptoribus.

¶ *Mes tiel gardein sur son account avera allowance de touts ses reasonable s & expences en touts choses.* And this is due to all Accountants by the Common w, and so it is declared by the said statute of Marlebridge, Salvis ipsis custodibus rationalibus s suis.

¶ *Allowance.* What other allowances shall the Gardian have? If the Gardian re- e the Rents and Profits of lande, and be robbed of the same, whether shall he be dis- ged thereof upon his Account? and it seemeth, that if he be robbed without his default or ligence, he shall be discharged thereof. As if a Bayliff of a Mannor or a Receiver, or a tor of a Merchant, or the like Accountant be robbed, he shall be discharged thereof upon account, and seeing the Gardian shall be charged as bayliff after the heirs age of 14. and ischarged upon his account, if he be robbed. Pari ratione, if he be robbed before the age of But otherwise it is of a Carter, for he hath his hire, and thereby implicitly undertaketh safe delivery of the Goods delivered to him, and therefore he shall answer the value of n, if he be robbed of them. Note the diversity, and so it was resolved in the Kings nch.

So it is if Goods be delivered to a man to be safely kept, and after those Goods are stolen him, this shall not excuse him, because by the acceptance he undertook to keep them safely therefore he must keep them at his peril.

So it is if Goods be delivered to one to be kept, for to be kept, and to be safely kept, is all in law: But if the Goods be delivered to him to be kept, as he would keep his own, there hey be stolen from him without his default or negligence, he shall be discharged. So if ods be delivered to one as a gage or pledge, & they be stolen, he shall be discharged, because ath a property in them, and therefore he ought to keep them no otherwise than his own; if he that gaged them tender the mony before the stealing, and the other refused to deliver n, then for the default in him he shall be charged.

If A. leave a Chest locked with B to be kept, and taketh away the Key with him, and ac- quainteth

† 3 Co. 37. Pl. Com.
(b) 8 E 2. præsentment 10. 7 . 3 39. 27 E 3. 89. 29 E 3 5. F.N.B 33. 31 E 3 E. Stoppel 340. Britton 163 164. Fleta lib. 1. cap. 10. ‡ 2 Rol. 41. ‡ 2 Cro 99. ‖ 3 Inst. 156. P R 120. a ‖ Doct. Pl. 13.
(c) It is called the statute of Marlebridge, because the Parliament in 52 H. 3 was holden there.
(f) 16 E 3. W. St. 100. 1 E 3. 55 77. 29 E 3 5. Vide 32 E 3 G. d 31 F.N.B 115 6 E 3 38.
(g) 16 E 2 Account 120. 17 E 2 ibid 121.
(h) 2 E 2 Account. 14 E 3 ibid. 3 M r. 137. Kyw. 131.
(i) 8 E 2 Avowry 210. 2 Inst. 380. 3 Co Cur 229. F N B 118 a Pat h. 16 El z. Rot. 436. in Communi banco.

* 11 Co. Earl of Devon's case. 2 Inst. 380. Mirror ca. 2. Sect. 12. Britton f. 163 b. Fleta lib 2 c p 64. 18 E. 2. Avowry 220. 17 E 3 59 Marlb. ca. 23. W. 2. ca 11.

The statute of Marlebridge intended by Littl. is cap. 17
= 1 Rol. 104 F.N.B. 117 = Doct. Pl. 13 41 E 3. 3. 22 Ass. 41. 22 E 3. Account 111. 29 Ass 28. 3 H 7. 4. b. 6 H. 7. 21 10 H 4. 25. 10 H 6 21. 2 E. 4. 15. Dock & Stud. c 38. fo. 130
= 2 Cro. 219. = 1 Rol. rep. 104
* H 38 Eliz inter Woodliff & Curties
= 1 Rol. 2 3. = 4 Co. 83 = Cro. El 815 = Cro. Ja. 198 N. y. 126 29 Ass p 29.
= 2 Cro. 188. 189.
= 8 Co 32. = 5 Co. 13. 8 E. 2. tit. Detinue 55.

‡ 2 Inſt. 168. ‡ Dr. & Stud. 130. ‡ Hob. 96. * Paſch. 43 Eliz. inter Southcote & Bennet in detinue. ‡ Lib. 4. f. 83. ‡ 3 Inſt 10. ‡ 1 Rol. 93. ‡ 4 Co. 83.

quainteth not B. what is in the Cheſt, and the Cheſt together with the goods of B. are ſtolen away, B. ſhall not be charged therewith, becauſe A. did not truſt B. with them as this caſe is. And that which hath been ſaid before of ſtealing, is to be underſtood alſo of other like accidents, as ſhipwreck by Sea, fire by lightning, and other like inevitable accidents. And all theſe caſes were reſolved, and adjudged in the Kings Bench. * And by theſe diverſities reconciled all the Books concerning this point reconciled.

Note Reader, it is neceſſary for any that receiveth goods to be kept, to receive them in the ſpecial manner, viz. to be kept as his own, or to keep them at the peril of the owner. And now is Littleton to be further heard.

¶ *Et ſi tiel gardein maria le heire deins* 14 *ans, &c.* For if he marry the heir after 14 he is out of his cuſtody, and no account ſhall be made therefore.

‡ 5 Co. 29. ‡ 1 R. 908. 910. ‡ 1 Cro. 79. ‡ 6 Co 63.

¶ *Il acountera a luy.* He ſhall account for the marriage of the heir, viz. for ſo much as any man bona fide had offered for the marriage, or would give in marriage unto him.

¶ *Ou a ſes Executors.* Note, that an infant of the age of 14 may make his Will (as ſome hereupon have collected) but the meaning of Littleton is, that if after his marriage he accompliſh his age of 18 years, at what time he may make his Teſtament, and conſtitute executors for his goods and chatties, and the words are ſo to be underſtood, as may ſtand with Law and reaſon. Note, Executors could not have an action of Account at the Common Law in reſpect of the privity of the account, but the ſtatute of W. 2. cap. 23. hath given the action of Account to executors, the ſtatute of 25 E. 3. c. 5. to Executors of Executors, and the ſtatute of 31 E. 3. c. 11. to Adminiſtrators.

7 E. 3. 62. 19 E. 3 Account 56. 38 E. 3. 7. 31 E. 3. tit. Account 57. 3 E. 3. 10. 46 E. 3. Account 40. 2 E. 2. Ibid. 45. 6 R. 2. Account 47. ‡ F. N. B. 141. g. ‡ 9 Co. 71.

¶ *Que il voile luy marier ſans prender le value.* So as the Gardian ſhall not account only for that which he ſhall receive in this caſe, but for that alſo which he might receive.

¶ *Si non que il luy marier a tiel mariage que eſt tant en value, &c.* This needeth no explication.

Hill. 3 E. 2. Coram Rege Rot. 34. Agnes Frowicks caſe. F. N. B 139. I. & 140. 26 E. 3. 65. 1 E. 3. 19. 20.

If the heir in Socage be raviſhed out of the cuſtody of the Gardian, and the raviſher marrieth the heir, the Gardian ſhall have a writ of raviſhment of ward, and recover the value of the marriage, &c. and ſhall account to the heir for the ſame.

And the Gardian in Socage is bounded by Law, that the heir be well brought up, and that his evidences be ſafely kept.

Trin. 1 H. 5. Coram Reg. Rot. 1. Midd. ‡ Poſt. 277. b.

The Grandmother of the ſon and heir of John Bernevil, who held the Manor of Totington in the County of Midd. in Socage, recovered the heir in a raviſhment of ward againſt Simon Chevin, which had married the ſtepmother of the heir, and by the rule of the Court the plaintiff Pro nutritura hæredis, & pro cuſtodia evidentiarum invenit plegios.

Sect. 124.

: F. N. B. 117. c. 19 E. 2. Avowry 221. 39 E. 3. 16. 41 E 3. Account 35. 49 E. 3. 10 18 E 3. 77. 28 Aſſ. p. 11. Pl Com. 542. 6 E. 3. 18. F. N. B. 118. b.

¶ *ET ſi aſcun auter home que neſt pas procheine amy, &c.* If a ſtranger entreth into the lands of the infant within age of 14. and taketh the profits of the ſame, the infant may charge him as Gardian in ſocage. And this doth well agree with the writ of account againſt a Gardian in ſocage, for the words be, Idem B. præfato A. rationabil' compotum ſuum de exiti'

¶ ET ſi aſcun auter home que neſt procheine amy, occupie les terres ou tenements del heire come gardeine en Socage, il ſerra compell' de render accompt al heire, auxi bien ſi come il fuiſſoit prochein amy: car il neſt pas plee pur luy en briefe Daccompt adire, que il neſt procheine amie, &c. mes il reſpondra le quel

AND if any other man, who is not the next friend, occupies the Lands or Tenements of the heir as Gardian in Socage, he ſhall be compelled to yield an account to the heir as well as if he had been next friend, for it is no plea for him in the Writ of Account to ſay that he is not the next friend, &c. but he ſhall anſwer

ad occupie les terres tenements come rdeine en ſocage ou my. Sed quære, ſi a- es ceo que le heire ad compliſh lage de 14 s, & Gardeine en ſo- ge continualm̃t oc- pia la terre tanque eire veint a plein age 21 ans, ſi le heire a plein age avera a- n Daccompt en- s le gardeine de nps que il occupia es les dits 14 ans, ne envers Gardeiñ Socage, ou envers come ſon baylife.

whether he hath occupied the lands or tenements as Gardian en Socage or no. But *quære*, if after the heir hath accompliſhed the age of 14 years, and the Gardian in Socage continually occupieth the land until the heir comes to full age, s. of 21 years, if the heir at his full age ſhall have an action of Account againſt the gardian, from the time that he occupied after the ſaid 14 years, as Gardian in Socage, or againſt him as his Bayliff.

provenientibus de terris & tenementis ſuis in N. quæ tenentur in ſocagio & quorum cuſtodiam idem B. habuit dum præd. A. infra ætatem fuit ut dicitur. **And true it is that in judgment of Law he had the cuſtody of the land:** and **he is called** Tutor alienus, **and the right Gardian in Socage** Tutor proprius, **and it is no plea for him to deny that he is** procheine amy, **but he muſt anſwer to the taking of the profits, as** Littleton **here ſaith.**

¶ *Sed quære, &c.* **This** Quære **came not out of** Littletons **quiver, for it is evident that after the age of 14 years he ſhall be charged as Bayliff at any time when the heir will, either before his age of 21 years or after.**

‡ F.N.B.118.b. 13 E.3.Account 77. 22 E.3. 11. 41 E.3.Account 35. 10 H.7.7. 4 H.7.6 b. 7 H.7.9.a.

‡ Ante 89 a. 6 E.3.38. 32 E.3.Account 60. 7 E.4.F.N.B.118. ‡ 3 Inſt.379. ‡ 1 Rol. 118.

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Item ſi gardeine en Chivalry face s executors & de- , le heire eſteant ins age, &c. les ex- utors averont le rde durant le non- e, &c. Mes ſi Gar- in en Socage face s Executors, & de- , le heire eſteant ins lage de 14 ans, s Executors nave- nt pas le garde, s un auter pro- eine amy, a que heritage ne poyt diſcend, avera la rde, &c. Et la cauſe diverſitie eſt, pur o que Gardeine en

ALſo if Gardian in Chivalry makes his Executors and die, the heir being within age, &c. the Executors ſhall have the Wardſhip during the nonage, &c. but if the Guardian in Socage make his Executors and die, the heir being within the age of 14 years, his Executors ſhall not have the wardſhip, but another the next Friend, to whom the Inheritance cannot deſcend, ſhall have the Wardſhip, &c. And the reaſon of this diverſity is be-

¶ *A Son proper uſe.* **A Tenant holdeth land of a Biſhop by Knights ſervice, which Seigniory the Biſhop hath in the right of his Biſhoprick, the Tenant dieth his heir within age, the Biſhop either before or after ſeiſure dieth, neither the King nor the ſucceſſor of the Biſhop ſhall have the wardſhip, but his Executors. For albeit the Biſhop hath the Seigniory en** auter droit, **yet the wardſhip being but a chattel he hath in his own right, and a chattel cannot go in the ſucceſſion of a ſole Corporation, unleſs it be in the caſe of the King.**

‡ Plow.525. ‡ Ante 5.a. 7 R.2.brc.624. 40 E.2.14. 2 H 4.19. 10 Eliz. Dier 277. ‡ 5 Co.126. ‡ 6 Co.70. ‡ Poſt.117.

‡ F.N.B.118 a. ‡ Plow.293. 7 H.4.41. 44 E.3.42.

And yet if a Biſhop have an Advowſon, and the church become void, and the Biſhop die, neither the ſucceſſor nor the Executors ſhall preſent, but the King, becauſe it is but a Thoſe in action. And ſo it is in caſe where the King hath wardſhip, but that

‡ 4 Co.64.b. 24 E.3.26. 44 E.3. F.N.B 33. See more of this in the Chapter of Warranty, Sect.740. F.N.B.34.36. ‡ Hob.154 ‡ 2 Cro.248.

that is a prerogative that belongeth to the King to provide for the Church being void, for where the tenure by Knights service is of a common person, the Executors of the tenant shall present where the avoidance fell in the life of the Tenant.

Chivalrie ad le garde a son proper use, & Gardein en Socage nad le garde a son use, mes al use del heire. Et en cas lou le Gardien en Socage devy devant ascun accompt faire per luy al heire, de ceo le heire est sans remedie, pur ceo que nul briefe Daccount gist envers les Executors si non pur le Roy solement.

caused the Gardian in Chivalrie hath the wardship to his own use, and the Gardian in Socage hath not the wardship to his own use, but to the use of the Heir. And in this case where the Gardian in Socage dieth before any account made by him to the heir, of this the heir is without remedy, for that no writ of Account lieth against the executors, but for the King only.

‡ F.N.B.119.b. 31 E.3. account 57. 19 E.3.ibid.156. 48 E.3.2. 2 H 4 13.F.N.B.117. 19 H.6.5. 4 E.4.25. 43 E 3.21.Lib.11.foa89. † F.N.B.117.c.

¶ *De heire est sauns remedie, &c.* For albeit in an action of Account against a Gardian in socage, &c. the Defendant cannot wage his Law, yet in respect of the privity of the matters of account, and the discharge resting in the knowledge of the parties thereunto, an action of Account neither lieth against the executors of the accountant, nor at the Common Law for the Executors of him to whom the account is to be made as is aforesaid, but that is holpen by statute, * It hath been attempted in Parliament to give an action of Account against the Executors of a Gardian in socage, but never could be effected.

‡ 3 Inst.404. * Rot. Parl. 50 E.3.nu. 123.

¶ *Si non pur le Roy solement.* (a) The reason of this is, because the King's Treasure is the sinews of war, and the honour and safety of the King in time of peace, firmamentum belli, & ornamentum pacis, and therefore the death of the party shall not bar the King of his treasure due unto him upon the account, because it is intended that the King was busied about the publick for the good of the Commonwealth, and had not leisure to call his accountant to make his account, & unillum tempus occurrit Regi. Little. speaketh of the Kings Prerogative but twice in all his books, viz here, and Sect. 178. and in both places, as part of the Law of England. Prærogativa is (b) derived of præ, i. ante, and rogare, that is, to ask or demand beforehand, whereof cometh prærogativa, and is denominated of the most excellent part, because though an Act hath passed both the Houses of Lords and Commons in Parliament, yet before it be law, the Royal assent must be asked, or demanded and obtained, and this is the proper sense of the word. But legally * it extends to all Powers, Preheminences, and Privileges, which the law giveth to the Crown, whereof Littleton here speaketh of one. Bracton lib. 1. in one place calleth it Libertatem, in another Privilegium Regi. (c) Britton (d) (following) W. 1.) Droit le Roy. (e) Regist. jus Regium, and jus Regium Coronæ, &c.

(a) Pl.Com.321. Keyleway 131. lib.11. fol 89. ‡ 1 Co. 41. Vide Sect.178. Stanf præ.32. (b) Fortescue fol 45. Rot.Parl 1 H.4.nu.188. Pl.Com.236. Stanf pl.cor.192 b. Stanf.præ. 1.a.b.& 10.b. * Stanf.præ.510.

(c) West.1.cap.50. (d) Britton fol.27. (e) Regist.fol.61,&c.

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43 E.3.barre 294. 9 E.4.36. Bract.lib.2.fol.35. Gnlavil.9.cap.3. ‡ 2 Rol.519. † Post.145.

¶ *Certeine Rent.* A Tenant holdeth of his Lord certain lands in Socage to pay yearly a pair of gilt Spurs, or five shillings in mony, at the feast of Easter. In this case the rent is uncertain, and the tenant may pay which of them he will at the said feast, and likewise the tenant may pay which of them he will for relief, but if he pay it not when he ought, then may the

¶ Item le Seignior de que la terre est tenus en Socage apres le mort son tenant, avera reliefe en tiel forme. Si le tenant tient per fealtie, & certain rent, a paier annualment, &c. si les termes de payment

Also the Lord of whom the Land is holden in Socage after the decease of his Tenant shall have relief in this manner. If the Tenant holdeth by fealty, and certain Rent to pay yearly &c. if the terms of

a payer per deux
nes del an, ou per
ter termes del an,
Seignior avera del
e ſon tenant tant
e le rent amount
il paya per an.
ome le tenant ti-
de ſon Seignior
fealtie, & x s. de
, payable a cer-
e termes del an,
ques l'heire payẽ
Seignior x s. pur
ſe, ouſter les x s.
il payera pur le
t.

payment to pay be at two terms of the year, or at 4 terms in the year, the Lord ſhall have of the heir his Tenant, as much as the Rent amunts unto, which he paieth yearly: as if the Tenant holds of his Lord by fealty, and ten ſhillings Rent payable at certain terms of the year, then the heir ſhall pay to the Lord ten ſhillings for relief, beſide the ten ſhillings which he paieth for the Rent.

Lord diſtrain for which of them he will. But if the tenure be to attend on his lord at the Feaſt of Chriſtmaſs, or to pay ten ſhillings, there the reliefe muſt be ten ſhillings, becauſe the other cannot be doubled, & ſic de ſimilibus. ‡ 2 Co. 37. ‡ 2 Rol. 519.

¶ *A paier annuelment.* If the tenant holdeth of his Lord by fealty, and to pay every two or three years ten ſhillings, albeit this be no annual Rent, yet, he ſhall pay ten ſhillings for relief, & ſic de ſimilibus.

But it is to be noted, that beſide relief whereof Littleton here ſpeaketh, there belongeth to a tenure in ſocage of common right aid, or the making of his eldeſt ſon a Knight at the age of fifteen years, and to marry his daughter at the age of 7 years. ‡ F.N.B 88. c. Vid. Sect. 103. F.N.B. 82. Weſt. 1. cap. 35. 25 E. 3. ſtat. 5. cap. 11.

En meſme le manner eſt, ſi
ne ſoit ſeiſie de certeine terre
eſt tenus en Socage, & fait
feement en fee a ſon uſe & mo-
ſeiſie del uſe (ſon heire del
de 14 ans, ou pluis) & nul
unt per luy declare, le Seig-
avera reliefe del heire, ũ-
e avant eſt dit. Et ceſt per le
ute de An. 19 Hen. 7. cap. 15.

In the ſame manner it is, if a man be ſeiſed of certain lands which is holden in Socage, and maketh a feoffment in fee to his own uſe and dieth ſeiſed of the uſe (his heir of the age of 14 years or more) and no will by him declared, the Lord ſhall have relief of the heir as afore is ſaid. And this by the ſtatute of 19 H. 7. ca. p. 15.

This is an addition to Littleton, whereof I omit it the rather for that the ſtatute of 19 H. for the cauſe abovementioned become of none effect.

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Et en tiel cas
apres la mort
Tenant, tiel re-
eſt due al Seig-
maintenant, de
l age que le
e ſoit, pur ceo
tiel Seignior ne
aver le gard
corps ne de terre

And in this Caſe, after the death of the tenant, ſuch relief is due to the lord preſently, of what age ſoever the heir be, becauſe ſuch Lord cannot have the wardſhip of the body, nor of the land of the heir.

¶ *Maintenant*, and as Littleton ſaith, he ought not to attend the payment of his relief according to the dates of payment of his Rent, but he ought to have his relief preſently, and for the ſame he may incontinently diſtrain after the death of the Tenant. ‡ 2 Rol. 519. 16 H. 7. 4. 18 E. 3. 26. F. 18. Bracton lib. 2. fol. 85. debit hæres una vice redditum ſuum hniuſ anni dupliceatum. Britton. fol. 178. aeſ. Fleta lib. 1. cap. 8.

And therefore in the caſe aforeſaid, where the Tenant holdeth by the Rent of five ſhillings, or a pair of gilt Spurs,

spurs, if the heir be not presently (that is, as presently and as conveniently as he may, all due circumstances considered) after the death of his Ancestor ready upon the land to pay relief, the Lord may distrain for which of them he will, and if the tenant tendred either of them according to the Law, and none for the Lord was ready there to receive it, yet the Lord may distrain for that which was tendred at his pleasure.

‡ Ante 47.‡ 2 Rol. 519.

¶ *De quel age que le heire soit.* And yet it appeareth in our books that in this case, the King in case of a tenure in Socage in chief, shall not have primer seisin, unl the heir be of the age of 14 years at the death of his Ancestor, for if he be under that age, is in the gard and custody of his prochein amy.

45 E. 3. 10 35 H 6. 52. 20 Eliz. Dier 361. Stanf præt. 13. b. F.N.B. 256, 259.

But otherwise it is in case of a Common person, as here it appeareth. And where in so impressions these words be added (issint que il passa lage de 14 ans) those words so added are against the law, and no part of Littletons work.

le heire. Et le Seignior en tiel case ne doit attendre a le payment de son reliefe, solonques les termes & jours de payment de rent, mes il doit aver son relief maintenant, & pur ceo il poit incontinent distraine apres le mort son tenant, pur relief.

And the Lord in such case ought not to attend for the payment of his relief, according to the terms and daies of payment of the Rent, but he is to have his relief presently, and therefore he may forthwith distrein after the death of his Tenant for the relief.

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¶ *UN lib. de pepper ou cumyn.* Here it is to be observed that the Lord may reserve Pepper or any other things that be exotica, forrein, of the growth of outlandish Countries, or beyond sea, as well as of the growth of England, whereby Navigation (the life of every Island) is employed. And where Littleton here putteth his case in the disjunctive, if the tenant doth hold by fealty, and one pound of Pepper or a pound of Cummin, he shall pay for relief a pound of Pepper, or a pound of Cummin over and besides the rent. But if the tenant holdeth of his lord by doing of certain work-daies in harvest, or to attend at Christmas, or such like, he shall not double the same, for of Corporal service or labour, or work of the tenant,

‡ Post. 142. d. ‡ Post. 93. a

¶ EN meisme le maner est lou le tenant tient de son Seignior per fealtie, & un li. de Peper, ou Cummin, & le tenant morust, le Seignior avera pur relief un lib. de Cummin, ou un lib. de Peper, ouster le common rent. En meisme le maner est lou tenant tient a payer per un certaine number de Capons, ou de Gallines, ou un paire de Gaunts, ou certaine bushels de frument, & hujusmodi.

IN the same manner it is, where the Tenant holdeth of his Lord by fealty, and a pound of Pepper or Cummin, and the Tenant dieth, the Lord shall have for a relief a pound of Cummin, or a pound of Pepper besides the common rent. In the same manner is where the Tenant holdeth to pay yearly a number of Capons or Hens, or a paire of Gloves, or certain bushels of Corn, or such like.

no relief is due, but where the tenant holdeth by such yearly Rents or profits, which be paid or delivered, whereof Littleton hath put his examples, and by them is manifestly proved that corporal service, work, or labour shall not be doubled in this Case.

¶ *Ou certaine bushels de frument.* Here it appeareth that the relief of bushels Corn is to be paid presently, though the tenant die in Winter before Corn be ripe.

ote, here are examples put of five natures: 1. Aromatorum exoticorum, of spices or drugs Outlandish growth. 2. Granorum, of Corn of English growth. 3. Avium villaticarum, of oultry, as Capons, Hens, &c. 4. Artificiorum, of handicrafts, as a pair of Gloves gene= either of Outlandish or English. 5. Aut similium, or such like (that is) of like Outlandish th or of English growth, or of Powltry, or of Artifices, Outlandish or English, and like n also that they may be paid or delivered to the Lord every year, or every second or year, &c. ‡ 2 Rol. 519.

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MEs en ascun cas le Seign- ur doit demurrer a reiner pur son re- sesque a certaine ps. Sicome le te- t tient de son Seig- per un Rose, ou un bushel de Ro- a pater al feast Nativity de Saint Baptist, si tiel nt devie en yver, que le Sñr ne poit p son reliefe tan- al tẽps q̃ les Ro- le course del an nt aũ lour creiser, & sic de similibus.

BUt in some case the Lord ought to stay to distrein for his relief until a certain time. As if the te- nant holds of his Lord by a Rose, or by a bushel of Roses to pay at the feast of St. *John* the *Baptist*, if such te- nant dieth in winter, then the Lord cannot distrein for his relief until the time that Roses by the course of the year may have their growth, &c. and so of the like.

¶ *Per le course del an.* Lex spectat naturæ ordinem. The Law re= specteth the order and course of Nature. Lex non cogit ad impossibilia, The Law com= pels no man to impossible things. The argument ab impossibili is forcible in Law, impossibile est quod naturæ rei repugnat. And here it is to be observed, that Littleton puts a diversity between Corn and Roses, for Corn will last, and therefore the Tenant must deliver the corn present= ly before the time of growth, (as before is said) and so of Saffron, and the like, but Roses or other flowers, that are fructus fugaces, cannot be kept, and therefore are not to be delivered till the time of growing, neither is the Te= nant driven by Law artifi= cially to preserve Roses, for the Law in these cases reas= saith, Et ars naturam, imitatur, ‡ Post. 197. b. ‡ 6 Co. 6. ‡ 2 Rol. 519. ‡ Post. 207. a. ‡ 9 Co. 79 ‡ Ante 47. b. ‡ 2 Rol. 520.

h Nature, and the course of the year, as Littleton here de similibus.

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ITem si ascun voille demand, que home poit te- de son Seignior alty tantsolement touts maners des ces, entant que t le tenant serra y il jurera a son gnior que il serra n Seignior touts ers des services , & quant il ad

ALso if any will ask, why a man may hold of his Lord by fealty only for all manner of services, in- somuch as when the tenant shall do his fe- alty, he shall swear to his Lord that he will do to his Lord all manner of Services due, and when he hath done fealty in

¶ *Quant le Tenant serra fealty, il jurera a son Seignior, &c.* Here it appeareth, that the doing of the fealty is both a performance of his service, and of his oath also when it is done, for that no other ser= vice is due. And that one oath of Fealty is taken of all that hold and is not to be changed for any nobelty or nicety of invention, for Jud= ges anciently and continually have suppressed innovations and would in no case change the ancient Common Law. ‡ 4 Co. 8. 31 E. 3. tit. Gager deli- verance 5. 38 E 3. 1. 42 Ass. p. 12. 4 E. 3. ca. 5. 18 E. 3 ca 4, & 6. 4 H. 4. ca. 2. 2 H. 4. fo. 11.

¶ *If*

¶ *Il covient que il doit faire a ſon Seignior eſcun ſervice.* For there can be no tenure without ſome ſervice, becauſe the Service maketh the Tenure.

fait fealtie en tiel caſe nul auter Service eſt due. A ceo il poyt eſtre dit. Que lou un Tenant tient ſa terre de ſon Seignior, il covient que il doit fait a ſon Seignior aſcun ſervice, car ſi le Tenant ne ſes heires devoyent fair nul manner de ſervice al Seignior ne a ſes heires donque per long temps continue il ſerroit hors de memorie & de remembrance, le quel la terr̃ fuit tenus de le Seignior, ou de ſes heires, ou nemy, & donques pluis toſt & pluis redim̃t voilont homes dire que la terre neſt pas tenus del Seignior ou de ſes heires, que autrement: Et ſur ceo le Seignior perdra ſon Eſcheat de la terre, ou per caſe auter forfeiture ou profit que il poit aver de le terre. Iſſint il eſt reaſon que le Seignior & ſes heires ont aſcun ſervice & teſtifier, que la terre eſt tenus de eux.

this caſe no other Service is due. To it may be ſaid, That where a Tenant holds his Land of his Lord it behoveth that he ought to do ſome Service to his Lord: for if the Tenant nor his heirs ought to do any manner of ſervice to his Lord nor his heirs then by long continuance of time it would grow out of memory whether the Land were holden of the Lord, or of his Heirs, or not, and then will men more often and more readily ſay, That the Land is not holden of the Lord nor of his Heirs, than otherwiſe: And ſo upon the Lord ſhall loſe his Eſcheat of the Land, or perchance ſome other forfeiture or profit which he might have of the Lands. So it is reaſon that the Lord and his heirs have ſome Service done unto them to prove and teſtifie That the Land is holden of them.

4 Co.1. 41 Rol. 816. See of this in the Chapter of Fee ſimple, Sect.4.
‡ F N.B. 143. Ibid. 176.
‡ Ante 13 a.

Eſchaeta is derived of this word Eſchier, quod eſt accidere: For an eſcheat is a caſual profit, quod accidit Domino ex eventu, & ex inſperato, which happeneth to the Lord by chance and unlooked for. And of this word Eſchaeta cometh Eſchaetor, an Eſcheator, ſo called, becauſe his office is to enquire of all caſual profits, and them to ſeiſe into the Kings hands, that the ſame may be anſwered to the King.

See more of this in the Chapter of Warranty, Sect.

Lands may eſcheat to the Lord two manner of wates: one by attainder, the other without attainder. By attainder in three ſorts; Firſt, Quia ſuſpenſus eſt per collum. Secondly, Quia abjuravit Regnum. Thirdly, Quia utlegatus eſt; without attainder, as if the tenant dies without heir.

4 F.N.B. 144.a
W.2. ca.33. Flet li.ca.43 & lib.5 ca. 34. 32 H.8. ca.24.
‡ Ibid. 167.

¶ *Ou per caſe auter forfeiture.* As if the land be alened in Mortmain, or when Littleton wrote, if the Tenants had erected Croſſes upon their houſes or Tenements, in prejudice of the Lords, that the Tenants might claim the privilege of the hoſpitlers to defend themſelves againſt their Lords, they had forfeited their Tenancies. But ſince Littleton wrote, the Hoſpitlers are diſſolved, and conſequently that forfeiture is gone.

¶ *Ou profit.* As Reliefe, aide pur file marrier, aid pur faire fitz Chivaler, and the like.

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Et pur ceo que fealty eſt inci- t a touts maners tenures ſoſpis le ure in Frankal- gn, (ſicome ſerra en le tenur de nkalmoign) & pur que le Seignioz ne loit al commence- nt del tenure aver n auter ſervice foz- Fealtie, il eſt rea- que home poet te- d ſon Seignioz, per tie tantſolement, & nt il ad fait ſon fe- , il ad fait touts ſervices.

AND for that Fealty is incident to all manner of Tenures but to the tenure in Frankalmoign, (as ſhall be ſaid in the Tenure of Frankalmoign) and for that the Lord would not at the beginning of the Tenure have any other Service but Fealty; it is reaſon that a man may hold of his Lord by Fealty only, and when he hath done his Fealty, he hath done all his Services.

¶ *Fealtie eſt incident.* Of Incidents there be two ſoꝛts, viz. ſeparable, and inſeparable. ‡ 4 Co. 8 ‡ Poſt. 143. a.

Separable, as Rents incident to Reverſions, &c. which may be ſevered; Inſeparable, as Fealty to a Reverſion oꝛ Tenure, which cannot be ſevered: Foꝛ as all lands and tenements within England are holden of ſome Loꝛd oꝛ other, and either mediately oꝛ immediately of the King; ſo to every tenure at the leaſt Fealty is an inſeparable incident, ſo long as the Tenure remains, and all other ſervices, except Fealty, are ſeverable. But where the Tenure is by Fealty only, there is no relief due, foꝛ the cauſe aboveſaid. ‡ Ante 19. b.

Sect. 132.

Tem ſi un home leſſe a un auter p̄ terme d̄ vie taine terres ou tenem̄ts, s parler de aſcun rent d̄ a le Leſſoꝛ, uncoꝛe il a fealtie a le Leſſoꝛ, pur que il tient de luy. Auri in leaſe ſoit fait a un hō̄e term de ans, il eſt dit le leſſee ferra Fealtie e Leſſoꝛ, pur ceo q̄ il ti- de luy. Et ceo eſt proue n p̄ les parols del briefe Waſt, quant le Leſſoꝛ cauſe de porter briefe de aſt envers luy; le quel iefe dira, que le Leſſee ti- les Tenements de le ſoꝛ pur terme de ans.

ALſo if a man letteth to another Lands or Tenements for term of life, without naming any rent to be reſerved to the Leſſor, yet he ſhall do Fealty to the Leſſor, becauſe he holdeth of him. Alſo if a Leaſe be made to a man for term of years, it is ſaid that the Leſſee ſhall do Fealty to the Leſſor, becauſe he holdeth of him. And this is well proved by the words of the writ of waſt, when the leſſor hath cauſe to bring a writ of waſt againſt him; which writ ſhall ſay, that the Leſſee holds his tenements of the leſſor for term of years. So the

¶ *Si un home leſſe pur terme de vie, ſauns parler de rent, &c. il ferra fealty, &c.* Vide Sect. 214.

And the reaſon is, Becauſe there is a Tenure; and Fealty (as hath been ſaid) is incident to all manner of Tenures: & it is to be noted, that the Law foꝛ the ‡ Ante 67. b. 68. a.

the Surety of the Lord, that his Tenant shall be faithful and loyal to him, doth create such a service as the Tenant shall be bound thereunto by oath.

10 E 3.34. 9 H.6.41. 40 H.6.13. 9 E.4.1. 21 E.4.29 5 H.5 12. 5 H.7.11.

¶ *Auxi si lease soit fait pur ans, &c. le Lessee ferra fealty.* For there also is a Tenure between them. And Littletons opinion in this case is holden for good Law at this day.

vide Sect. 84. ‡ Ante 63.a.

¶ *Et ceo est prove bien per les parols del briefe, &c.* Nota, the original Writs are (as it were) the foundations and grounds of the Law, and, as it appears here by Littleton, are of great authority for the proof of the Law in particular cases.

¶ *Pur ceo que il nad sure estate.* Therefore Tenant at will shall not do Fealty, (as hath been said before) because the matter of an Oath must be certain. The rest of this Section needs no explication.

‡ 5 Co. 10.

Issint le briefe prova un tenure enter eux. Mes celuy que est tenant a volũt solonqz le course del common ley ne ferra fealtie, p̃ ceo q̃ il nad ascun sure estat: mes autrement est de tenant a volunt solonque l' custome del manor, pur ceo que il est obligie pur faire fealtie a son Sñr pur deux causes; iun est p̃ cause del custome, & lauter est pur ceo q̃ il prist son estate en tiel forme p̃ faire a son Sñr fealtie.

Writ proves a tenure between them. But he which is tenant at will according to the course of the Common Law shall not do Fealty, because he hath not any sure estate: but otherwise it is of Tenant at will according to the custom of the Manor, for that he is bound to do Fealty to his Lord for two causes; the one is by reason of the custom, and the other for that he taketh his Estate in such forme to do his Lord Fealty.

Chap. 6. *Frankalmoigne.* Sect. 133

Bract. l 2.ca. 5.& l.4.c.2. Brit.fol.164.165. Mirror cap.2.Sect.18. Glanvil lib.7.cap.1. & lib.12.cap.3. & 25. Flete lib.3.ca.5.

¶ *UN Abbe, Prior, ou auter home de religion, ou de Saint Esglise.* It is to be observed, that of Ecclesiastical persons some be regular, and some be secular. They be called Regular, because they live under certain rules, and have vowed three things, true obedience, perpetual chastity, and wilful poverty. And when a man is professed in any of the orders of Religion, he is said to be home de Religion, a man of religion, or religious: Of this sort are all Abbots, Priors, and others of any of the said orders regular. Secular are persons Ecclesiastical; but because they live not under certain rules of some of the said orders, nor are Notaries,

21 H.7.39. 36 E.3.14.

¶ Tenant en Frankalmoigne est, lou un Abbe ou Prior, ou un auter home de religion, ou de saint Esglise, tient de son Sñr en Frankalmoigne, que est adiẽ en Latin, in liberam Eleemosynam. Et tiel tenure comment̃ adonques ẽs an auncient temps en tiel forme: Quant un home en auncient temps fuit seisie ỹ certain terres ou tenements en son demesne come de fee,

Tenant in Frankalmoigne is where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his Lord in Frankalmoigne, , that is to say in Latine *in liberam Eleemosynam*, that is, in free Alms. And such tenure began first in old time: When a man in old time was seised of certain lands or Tenements in his Demesne as of Fee, and of the same land in

de meſmes les ter- ou tenements en- ffa un Abbe & ſon vent, ou un Prior, a aver & tener a & lour ſucceſſors a ts jours en pure & petual almoign, ou Frankalm̃, ou y ti- parols, A teñ de le ntor ou de le feoffor e ſes hŕes ẽ Frank- noign, en tiels caſes tenements ſont te- s en Frãkalmoigñ.

feoffed an Abbot and his Covent, or Prior and his Covent, to have and to hold to them and their Succeſſors in pure and perpetual Almes, or in Frankalmoign, or by ſuch words, To hold of the Grantor or of the Leſſor and his heirs in free Almes: In ſuch caſes the Tenements were holden in Frankalmoign.

they are for diſtinction ſake called Secular, as Biſhops, Deans and Chapters, Archdeacons, Prebends, Perſons, Vicars, and ſuch like. All which Littleton here includeth under theſe general words, de ſaint Egliſe, of holy Church; and none of theſe are in Law ſaid to be homes de religion, or religious.

Where Littleton ſaith infeoffa un Abbe & ſon Covent, his meaning is, that the Abbe but only is infeoffed, for he is only a perſon capable, and the Covent are dead perſons in law, and have power of aſſent only, and that they thereunto aſſent. But ſince Littleton wrote, all Abbies, Priories, Monaſteries, and other reli-

See the Stat. of 27 H 8. not printed but in the Abridement. 31 H.8.c.13 & 32 H 8.c.24.&c. Vid Sect.530. 4 Inſt.324. Matth Parker de vitis Archiepiſcoporum. Lynwood. Camd. Britannia id.Rot Parl. 27 H 8. 36 H 8 : E.6 &c. Weſtminſter Abbey was newly erected by H 8. but by Q. Mary it was ſuppreſſed to be an Abby, and by Q. Eliz created a Deanry Collegiate. Cheſter had been anciently a Biſhops See, and long ſince tranſlated to Coventry. 33 H 8.cap.31. 4 Inſt.331. Camden ubi ſupra. 26 H.8. firſt fruits and tenths. Vid. Sect.137. * Lib 3.fo.73. Dean and Chap. of Norwich caſe. Vide Sect.134.201. 31 H.8 c.p.10. Vide more hereof, Sect. 180.525.648 &c. Fleta lib.2.cap.23.

s houſes of Monks, Canons, Friers, and Nuns, &c. have been diſſolved, and their eſſions given to the Crown.

he Eccleſiaſtical ſtate of England, as it ſtandeth at this day, (which is neceſſary for our dent to know) is divided into two Provinces, or Archbiſhopricks, viz. of Canterbury, and ork. The Archbiſhop of Canterbury is ſtiled Metropolitanus & Primas totius Angliæ and Archbiſhops of York, Primas Angliæ. Each Archbiſhop has within his Province Suffra- Biſhops of ſeveral Dioceſſes. The Archbiſhop of Canterbury hath under him within Province, of ancient foundations, viz. Rocheſter, his Principal Chaplain, London his n, Wincheſter his Chancellor, Norwich, Lincoln, Ely, Chicheſter, Salisbury, Exeter, Bath and ls, Worceſter, Coventry and Litchfield, Hereford, Landaff, St. David, Bangor, and St Aſaph, four founded by King Henry 8. erected out of the ruins of diſſolved Monaſteries, (that is y) Glouceſter, Briſtol, Peterborow, and Oxford. The Archbiſhop of York hath under him (viz.) the Biſhop of the County Palatine of Cheſter, newly erected by King H. 8. and ed by him to the Archbiſhoprick of York, of the County Palatine of Durham, Carlile, the Iſle of Man, annexed to the Province of York by H. 8. but a greater number this hbiſhop anciently had, which time hath taken from him. The extent of every Dioceſs may elſewhere read, the which for brevity I here omit. All the ſaid Archbiſhoprics Biſhoprics of England were founded by the Kings of England, to hold by Barony, as after ſhall be ſaid. * And every Archbiſhop and Biſhop hath his Dean and Chapter, reof more ſhall be ſaid hereafter. The Archbiſhop of Canterbury hath the Precedency, to him the Archbiſhop of York, next to him the Biſhop of London, and next to him the hop of Wincheſter, and then all other Biſhops of both Provinces after their ancientneſs. Every Dioceſs is divided into Archdeaconries, whereof there be 60 and the Archdeacon is d oculus Epiſcopi; and every Archdeaconry is parted into Deanries, and Deanries again Pariſhes, Towns, and Hamlets. And thus much for the better underſtanding of our Au- , and how the ſtate Eccleſiaſtical ſtandeth at this day, ſhall ſuffice.

¶ *Frankalmoigne, que eſt a dire en Latine, in liberam Elemoſinam.* Engliſh, in fee Alms. There is an Officer in the Kings houſe called Eleemoſynarius, garly called the Kings Almoner, (whoſe office and duty is excellently deſcribed in ancient thors,) viz. Fragmenta diligenter colligere, & diligenter diſtribuere ſingulis diebus egenis: æ- tos & leproſos, incarceratos, pauperesque viduas, & alios egenos vagoſque in patria commorantes ritative viſitare: item equos relictos, robas, pecuniam, & alia ad Eleemoſynam largita, reci- e, & fideliter diſtribuere. Debet etiam Rex-a ſuper Eleemoſinæ largitione crebris ſummoniti- bus, ſtimulare, præcipue diebus Sanctorum, & rogare ne robas ſuas, quæ magni ſunt pretii, hi- onibus, blanditoribus, accuſatoribus, ſeu meniſtrallis, ſed ad Eleemoſynæ ſuæ incrementum, eat largiri.

All Eccleſiaſtical perſons may hold in Frankalmoign, be they ſecular or regular, and no lay ſon can hold in Frankalmoign. This adjective (liber) doth diſtinguiſh many things in law m others: as here libera Eleemoſyna are words appropriated to this caſe, and do diſtinguiſh om a Tenure by Divine Service; liberum tenementum, from a Tenure in Villenage, or

Vid Sect. 1. Bract. lib. 4. c. 37. 38. Britton cap. 32.

Britton cap.66.
Br &.lib.4.F.N.B.150.
Bract lib.4.fo.288.247.
292. Britton fol.245.
Fleta lib.5.cap.21.
portef. c.26. 24 E 2.34.
43 E 3 conspir.11.
27 Ass 59.Stanf.175.
Vide Sect.199.
Fleta lib 1 cap.47.
Glanvil l.7.c.1. f.44.45.
acc.
Britton c 66. fo.164.
Br & I 2.c.5. & 10.
F.N.B 211.
Fleta lib 1.cap.42.

by copyhold,or base tenure; liberum feodum,frank free,from a tenure in ancient Demean rum maritagium, from other estates tail; libera firma, frank ferm, when an estate is chan from Knights Service to Socage; liberum Socagium, from a tenure by service in Ch Francus Bancus, to distinguish it from other Dowers, for that it cometh freely without act of the husbands, or assignment of the heir. Libera lex,to distinguish men, whose est and freest birthright it is, from them that by their offences have lost it, as tainted in an attaint,in a conspiracy upon an Indictment,or in a Premunire,&c. And so bera capella,francus plegius,frankpledge, libera chasea,free chase,liber burgus, liber rus,and the like. But in a matter (some will say) of curiosity this shall suffice; and seeing it tends to the better understanding, (others say) it is tolerable.

By the ancient Common Law of England, a man could not alien such lands as he had discent,whithout the consent of his heir; yet he might give a part to God in fee Almoigne with his daughter in free mariage,or to his servant in remuneratione servitii. Our old Boo discribed Frankalmoigne thus,when lands or tenements were bestowed upon God. (that given to such people as are consecrated to the service of God. In our ancient Books t gifts of devotion were called Churchesset,or Churchseed, quasi semen Ecclesiæ; but in a m particular sense it is described thus, Certam mensuram bladi tritici significat,quam quilibet sanctæ Ecclesiæ die sancti Martini,tempore tam Britonum quam Anglorum, contribue tamen Magnates post Romanorum adventum illam contributionem secund' veterem Legem M nomine primitiarum dabant, prout in Brevi Regis Kanuti ad summum Pontificem transmissum tinetur, in quo illam contributionem Churchsed appellant,quasi semen Ecclesiæ.

‡ 2 Rol. 61.
7 E 4 12. 33 H.66.7.
39 H.6. 29.
(a) Mortmaine,
Britton fol.32.& 90.
Bract.lib 2.cap 5.
Fleta lib.3.cap.5.
11 H.7.12.

Et tiel tenure. For albeit neither fealty nor any other temporal service is due, yet is a Tenure.

(a) *En ancient temps.* That is to say, before the Statutes of Mortmain, viz. Magna Charta,cap.36. & 7 E.1.de Religiosis, &c. and before the Stature of Quia emptores terrarum; as shall be after in his proper place said in this Chapter.

¶ *Enfeoffe un Abbe & son Covent, &c.* Albeit the Covent be dead persons in Law, and the Abbot only capable, (as before is said) yet if the feoffment be made to an Abbot and Covent,the feoffment is good,and the state vesteth only in the Abbot. And note, a man may infeoff an Abbot, a Bishop, a Parson, &c. or any other sole body politique by Deed without Deed,in free Alms; and so may a gift in frankmarriage be made without deed also but if lands be given to a Dean and Chapter, or any other Corporation aggregate of many there the gift must be by deed.

3 H.6. 30.b.

A aver & tener a eux & a lour successors. For in case of an Abbot Prior and Covent,regularly a fee simple doth not pass without these words (Successors;) but the diversity standeth thus between a Corporation aggregate of many capable persons, and sole Corporation. As if lands be given to a Dean and Chapter, they have a fee simple without these words (Successors,) for that the body never dies; but if lands be given to a Bishop Parson,or any other sole Corporation,who after their deceases have a succession, there without these words (Successors) nothing passeth unto them but for life. But of Corporations aggregate of many there is a diversity, when the head and body both are capable, as in case of Dean and Chapter, and when one (as hath been said) is only capable, as in case Abbot or Prior and Covent: but yet out of the general rules the case of Frankalmoigne excepted, as hereafter shall be said. Also lands must be given to a Corporation aggregate many by deed, but to a sole Corporation it may be granted without deed.

1 Rol 832.
Vid.Litt.in the Chapter of Fee simple,Sect.1.2.

39 H.6 30.

Bracton lib. 2. ca. 10. Potest donatio fieri in liberam Eleemosinam Ecclesiis Cathedralibus, Conventualibus, Parochialibus, & viris religiosis.

45 H.6.56.7 E.4.11.
Vide Bract.l.2 c.10.
35 H.6 56. 7 E.4.11.
Bract. ubi supr.
44 E.3.24.
‡ F.N.B.210.f.
20 H.6.fol.36.
38 E 3.4.a.14 H.6.12.
10 H.7.13.16 H 7 9.
18 E 3. Conusans 39.
33 H.6.22 17 E.3.51.
6 E.3.54.&c.
Tr 5E.3.Rot 4.in Scaccario. The Prior of Dunstables case.

¶ *En pure & perpetual almoigne.* Here it appeareth that a Tenure in Frankalmoign may be created without this word (libera,) for pura implieth as much.

¶ *Ou en Frankalmoigne.* But one of these words, either pura, or libera, must be used, or else it is no Tenure in Frankalmoigne.

¶ *Ou per ceux parolx,a tener de le grantor ou feoffor & ses heires en Frankalmoigne.* Here it appeareth that by these words a fee simple passeth without the words (Successor) albeit it be in case of a sole Corporation. For as in case of a gift in Frankmarriage, an estate tail passeth to the Donees without words of heirs of their two bodies, as hath been said in the chapter of Fee tail, so in case of a gift in Frankalmoign (which may be resembled to a divine marriage) a Fee simple passeth, as hath been said. (thought it be case of a sole corporation,) without this word (Successors.) And besides, Grants in Frankalmoign are ancient Grants, as hath been said,and therefore shall be allowed,as the Law was taken when such Grants were made.